The Human Rights Based Approach Framework

A Guide to Policy and Program Development

Ontario
Human Rights Commission
Commission ontarienne des droits de la personne

The Human Rights Based Approach Framework

A Guide to Policy and Program Development

Ontario Human Rights Commission

The Human Rights Based Approach Framework: A Guide to Policy and Program Development

Disponible en français

ISBN:
Print: 978-1-4868-7671-6
HTML: 978-1-4868-7673-0
PDF: 978-1-4868-7675-4

© February 2024, Gouvernement de l'Ontario

Available in various formats on request
Also available online: www.ohrc.on.ca

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The Ontario *Human Rights Code* (Code)

The Ontario *Human Rights Code* is for everyone. It is a provincial law that gives everybody equal rights and opportunities without discrimination in areas such as jobs, housing and services. The *Code's* goal is to prevent discrimination and harassment because of 17 protected grounds, in five social areas.

Protected grounds	Protected social areas
• **Age** • **Ancestry, colour, race** • **Citizenship** • **Ethnic origin** • **Place of origin** • **Creed** • **Disability** • **Family status** • **Marital status (including single status)** • **Gender identity, gender expression** • **Receipt of public assistance (in housing only)** • **Record of offences (in employment only)** • **Sex (including pregnancy and breastfeeding)** • **Sexual orientation**	• **Accommodation (housing)** • **Contracts** • **Employment** • **Goods, services, and facilities** • **Membership in unions, trade, or professional associations**

The *Code* was one of the first laws of its kind in Canada. Before 1962, various laws dealt with different kinds of discrimination. The *Code* brought them together into one law and added some new protections. When there is a difference or conflict between the *Code* and another Ontario law, the *Code* has primacy unless the other law specifically states otherwise[1].

The preamble of the *Code* provides that, "it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination". To comply with the *Code*, public policy must consider the human rights of the people in Ontario.

Why use the HRBA Framework?

The *Code* prohibits discrimination in these social areas based on protected grounds. A ground can be a personal identity characteristic, attribute or trait that is protected from discrimination under the *Code.* A person can experience discrimination based on multiple protected grounds, such as sexual orientation and race.

People with multiple, intersecting identities may be particularly vulnerable to discrimination, such as Indigenous women and girls, older East Asian people and racialized people with a disability. Policy and program decisions that don't consider the unequal burdens and systemic discrimination faced by people may be in violation of the *Code*.

A human-rights based approach to policy and program development means that particular attention is given to people who are vulnerable or disadvantaged based on grounds protected under the *Code*, such as gender, race, creed or disability. This includes ensuring that people are not subject to discriminatory treatment and that policies and programs should account for pre-existing sources of discrimination and inequitable conditions.

For example, it is well established that racialized people, older people, single parents, and people with disabilities, including mental health and addictions disabilities, were disproportionately burdened by the COVID-19 pandemic. In many instances, pre-existing barriers and disadvantages have been perpetuated or exacerbated by COVID-19. In this context, policy and program decision-makers should have a heightened awareness of the need to ensure policies and programs benefit people equally.

What is a human rights-based approach (HRBA)[2]?

A human rights-based approach is derived from international and domestic human rights obligations and is used to promote and protect human rights in policy and program development. At the heart of a human rights-based approach is the recognition that inequality and marginalization deny people their human rights and often keep them in poverty.

A human rights-based approach seeks to analyze inequalities and redress discriminatory practices. It empowers the most marginalized communities by supporting their participation and inclusion in program or policy development and strengthens the capacity of government policy and decision makers to respect, protect and fulfill their legal human rights obligations.

It ensures that program or policy development, implementation, management, and ongoing monitoring consider human rights principles and goals including equality and non-discrimination, participation of impacted groups, and oversight and accountability.

What are the potential outcomes of applying the HRBA Framework?

1. The requirement to meet human rights obligations will permeate the entire program and policy development cycle.
2. Policies and programs will account for pre-existing sources of discrimination and inequitable conditions.
3. People will benefit equally from policies and programs.
4. Policies and programs will address structural-level inequalities that interfere with human rights and will avoid adversely impacting people.

The HRBA Framework

The following human rights-focused questions and considerations help users to think differently about human rights and fulfilling their obligations under the *Code*. Understanding human rights obligations, both procedural and substantive, is a gateway to building policies and programs that meet the human rights of all Ontarians.

Stage one: Context analysis – Identifying the human rights context of your initiative
What are the main policy or program challenges your initiative seeks to address?
What human rights issues are engaged by the policy or program?
What existing relationships do you have, or will you need to build with Indigenous communities and organizations to engage meaningfully and respectfully on your initiative?
How will this initiative respect and uphold the rights of First Nations, Métis, and Inuit (Indigenous) Peoples, e.g., Jordan's Principle
What historical and current factors underlie gaps or present challenges to effectively addressing those gaps?
Will the initiative require the use of a population-specific equity tool, e.g., a tool that focuses on disability?

Stage two: Undertaking research & analysis – Conducting research and analysis that considers and reflects human rights obligations
Does any current research/analysis identify potential barriers or systemic discrimination that may impact the ability of people protected under Code grounds to benefit from the initiative?
Does your research/analysis consider government and non-governmental sources of socio-demographic data collected in this program or policy area, e.g., data arising from comparable initiatives in other jurisdictions?
Does your research/analysis include the perspectives of human rights experts and people with lived experience?

Stage three: Planning engagement – Working with impacted communities to develop an engagement process that works for everyone
Have you built in time, adequate funding, and flexibility to allow for effective engagement throughout the policy or program development process?
Have you considered which communities will be specifically impacted and the extent to which a more individualized approach is necessary based on the unique circumstances of these communities?
How will you reach individuals and groups who have been disproportionally impacted by past policies and programs in this area and who can provide knowledgeable input about barriers, e.g., lived experts and frontline service providers?
What is your organization's current relationship with the communities you are working with?
Do you have a specific and tailored plan to engage First Nations, Inuit, and Métis communities?

Stage four: Developing options & recommendations - Proposing options and recommendations that respond to the rights, needs and perspectives of communities identified during research and engagements
Do any options/recommendations include unintentional barriers preventing marginalized people protected under *Code* grounds from accessing the program or service and reaping equal benefits?
Do the options/recommendations mandate the collection of socio-demographic data? And how will it use that data to inform decision-making and evaluate outcomes for the options/recommendations?
How do the options/recommendations seek to address the root causes of systemic discrimination in this area?
Do the options/recommendations address the specific needs of First Nation, Inuit, and Métis communities?

Stage five: Seeking approvals - Decision makers have confidence in a recommended approach that thoroughly considers and addresses human rights obligations
Do your approval documents demonstrate how human rights were considered/addressed?
Were there outstanding human rights issues you were unable to address and are they identified in your documents?
Are there unintentional barriers for people being created by this decision that you were unable to address and why?

Stage six: Implementing programs & services – Upholding human rights in service delivery and implementation
What mechanisms are in place to ensure that your initiative is delivering the intended benefits to all participants, including marginalized people protected under *Code* grounds, and that any barriers can be identified and addressed?
Is your public communication inclusive, accessible, and provided in multiple languages where needed?
How will the data be collected and shared back with communities in culturally sensitive and ethical ways?

Stage seven: Monitoring & evaluation - Monitoring/evaluation frameworks to assess the human rights' impacts of the initiative
How will you monitor for potential disparate impacts? And what information will you rely on to inform decision-making and evaluate outcomes?
How will your monitoring and evaluation process document steps taken to assess, mitigate or remove any barriers that have been identified?
Would the monitoring/evaluation benefit from the involvement of impacted communities and organizations in designing, carrying out and or commenting on the evaluation?

Appendix

A Human Rights-Based Approach to Discriminatory Displays of Names, Words and Images

Objective

The Ontario Human Rights Commission has prepared this guidance on applying the HRBA framework in developing policies and procedures to respond to situations that involve displays of names, words and images.

Background

Across Ontario, names, words and images referring to current or historical figures, events or symbols have been in use in various forms, including but not limited to:

- commemorative days, events, statues and plaques
- names of roads, buildings, or landmarks
- names, logos or mascots of groups or organizations

Perspectives shared by Indigenous peoples and racialized communities, among other people, have led to a greater awareness that names, words and images can sometimes be appropriating, derogatory, exclusionary, and discriminatory. Frequently cited examples of this include:

- commemoration of current or historic persons known for their discriminatory views and actions, including committing or perpetuating acts of racism against people protected under grounds in the *Human Rights Code* (*Code*)
- use of derogatory terms and images that might represent or be linked with discriminatory views and actions
- use of names, words and images that might negatively represent or appropriate the culture of a group protected by the grounds of the *Code*

In 2015, the Honourable Murray Sinclair and Chair of the Truth and Reconciliation Commission (TRC) noted the profound impact that stereotypes in sports have on

young Indigenous people. The TRC Final Report documents the challenges Indigenous youth face in forming their identities and the important role of sports in developing self-esteem. One of the TRC's Calls to Action includes a call to ensure that sport policies and programs are inclusive of Indigenous peoples.

Additionally, the TRC calls for Indigenous peoples' right to self-determination to be integrated into civic institutions in a manner consistent with the principles norms and standards of the *United Nations Declaration on the Rights of Indigenous Peoples*, which affirms that "all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust."

Context

Commemorations and other displays of names, words and images can, in certain circumstances, amount to discrimination contrary to section 1 of the *Code* if they discourage or prevent a person from equitable access to a service for reasons associated with the protected grounds under the *Code*.

Discriminatory displays of names, words and images are also prohibited under Section 13(1), which states that a right under the *Code* is infringed by a display before the public, such as a notice, sign, symbol, emblem, or other similar representations that indicates the intention to infringe or incite the infringement of the rights of others.

To establish discrimination, it must be shown that rights that are protected under the *Code* have been infringed by the display of the name, word or image. The OHRC's Policy on preventing discrimination based on creed provides guidance on factors to consider when reviewing creed-specific symbols:

There is a significant difference between an individual person expressing their creed belief by using a symbol in a private capacity, and an organization displaying or endorsing a creed-based symbol. Whether the display of a creed symbol in a social area may comply with the *Code* may depend on several factors, including: who is displaying the symbol and why, the symbol's location, visibility, or

contemporary significance, the extent it may be associated with the organization as a whole versus an individual person, and whether the display has any significant negative impact (for example, by causing creed-based pressure, exclusion or discrimination against others).

Arguments typically advanced in defense of maintaining the status quo are that:

- preserving such symbols demonstrates the pervasiveness of colonialism, racism or discrimination which persists to the present day
- the cost for removing, replacing, or modifying the display of the name, word or image is prohibitive, or an inefficient use of funds
- it would create an unfair burden on residents, business owners, and other members of the community who would have to re-register or update their mailing address for government documents, financial accounts, and other services
- removing the discriminatory name, word or image constitutes "reverse discrimination", or that such actions attempt to rewrite or erase moments in history
- using a derogatory word or image should be treated differently than commemorations that are open to broader interpretation
- the actions of the individuals commemorated and the decisions made by those in the past should not be judged by present day standards

While these factors may be considered in determining appropriate steps to remedy a discriminatory display of a name, word or image, they do not override a service provider's responsibility to meet its human rights obligations.

The *Code* permits organizations to take corrective actions to assist people that have been subjected to historical, systemic discrimination. Such actions seek to remedy systemic discrimination and are not reverse discrimination (see section 5.3 of the OHRC's Policy and guidelines and racism and racial discrimination for the OHRC's response to claims that involve reverse discrimination).

Guided steps to apply the HRBA Framework

The following human rights-focused considerations and questions will help you develop policies and procedures to prevent and respond to situations that involve displays of names, words and images.

Stage one: Identifying the human rights context

Policies on naming, commemoration, and other displays of names, words and images should require an analysis of the human rights context of a situation. Whether your organization is developing new policies or you already have existing policies, they should account for the following:

- Do your policies and procedures recognize people's rights under the *Code* to be free from discrimination?
- Do your policies recognize your organization's responsibilities under the *Code* to maintain environments that are free from discrimination?
- When deciding on the display of a name, word or image, or reviewing concerns about a display, do your processes include an analysis for discrimination and examine whether it can contribute to an atmosphere of inclusion or exclusion?
- Do those processes consider historical and cultural factors that underlie the impact of a display?
- Do those processes recognize the importance of participation from the affected group? Do you have resources and engagement strategies to develop relationships with affected groups and ensure that they are meaningfully participating in your process?

Stage two: Undertaking research and analysis

Historical research is necessary to understand how a situation may interfere with someone's human rights as a result of systemic discrimination: the policies, practices, and culture of an organization that create or perpetuate disadvantages. Failure to consider the structural context involved could perpetuate exclusionary and differential treatment. For example, municipal street naming policies may be problematic if they promote commemorations of individuals of historic importance but do not require research to identify whether some parts of the community may view the person's actions as discriminatory.

Stage three: Planning engagement

Allocating time and resources to formally engage with impacted communities is essential to preventing and responding to claims of discrimination. Effective engagement is necessary because:

- the history and legacies of individuals and events once celebrated, and the meaning and understanding of words and images, may have become complicated and problematic as different perspectives and information are more widely known and recognized
- community members might not share or interpret contextual information the same way (for Indigenous communities this means taking an inclusive approach, possibly with members both on and off reserve as well as groups including urban Indigenous and Indigenous women's organizations)
- the meaning and understanding of a symbol might have changed over time
- in some cases, the difficulties in understanding the concerns raised may reflect the need for a broader understanding of the challenges that marginalized members of the community are experiencing

Ineffective engagement or failing to engage at all with affected people may exacerbate harms that result from the situation. The opposition to then-Holland Township's efforts to rename Negro Creek Road (see a summary of the situation in the case examples below) demonstrates that service providers should not make

assumptions about the perspectives of affected people and act prior to engaging with them. It may be necessary for service providers to revisit long-standing norms, or seek expert guidance about history, context and negative impacts before making decisions.

Stage four: Developing options and recommendations

Policies on the displays of names, words and images should include guidelines and procedures that recognize the protections provided under the *Code* and clearly state how the organization will respond to and remedy allegations of discrimination.

Organizations must review their policies, practices and programs to ensure that they do not have an adverse impact or result in systemic discrimination. They can create inclusive, non-discriminatory environments and avoid costly resolutions through positive and proactive practices.

Including a public awareness and cultural competency training component to resolve a situation may help address misinformation and other barriers that contribute to tension and conflict.

Stage five: Seeking approvals

To act in accordance with human rights principles when making decisions:

- consider every situation as unique and do not rely on the decisions that were made elsewhere. While situations may share similarities, the human rights context may differ. Municipalities with roads or buildings that have the same name, or sports organizations with the same logos, may need to resolve situations differently based on the feedback from their local communities; organizations must maintain environments that are free from discrimination. This may require a decision to act unilaterally to prevent discriminatory impacts

- organizations must demonstrate undue hardship before citing cost as a prohibitive factor to meeting their human rights obligations

Stage six: Implementing programs and services

Adopting a collaborative approach to understanding diverse perspectives during the implementation of a change to a policy or the display of a name, word or image could lead to amicable resolutions that prevent or reduce the tension and divisiveness associated with this issue. Engaging meaningfully with affected communities early in the process may allow for positive working relationships to create safe spaces that are culture-based and trauma informed, limiting the harms to individuals who may have experienced discrimination. Ideally, fostering positive relationships will aid in facilitating conversations that are led by members of the affected community.

All parties involved have a responsibility to act in good faith, show respect to one another, and cooperate to identify steps forward, including considering options that preserve, modify, replace or remove the display of a symbol.

Stage seven: Monitoring and evaluation

Organizations that are responsible for displays of names, words and images should continuously monitor and evaluate the meaning and use of those names, words and images, and engage with affected communities. The broader engagement with affected communities achieved in Stage Three should aid in gathering feedback to help make informed decisions.

Cases involving the display of names, words and images

Negro Creek Road

In 1996, the descendants of Black settlers filed a human rights complaint to restore the name of Negro Creek Road after Holland Township's municipal council (now Chatsworth Township) changed it to Moggie Road. The descendants called for the preservation of the road's name to commemorate the Black settlers and to prevent the erasure of their history and that of rural Black Canadians. The township agreed to restore the name as a result of the human rights complaint.

Colonization Road

In 2021, the town of Fort Frances renamed Colonization Road East to Agamiing Drive and Colonization Road West to Sunset Drive. The town also developed a street naming and renaming policy. Colonization Roads were constructed for migrating settlers to move in under the *Public Lands Act* to displace First Nations people.

This decision reflects the town's commitment to Indigenous reconciliation, and the Truth and Reconciliation Commission's call to "repudiate concepts used to justify European sovereignty over Indigenous peoples and lands."

Indigenous-themed imagery in sports

In 2015, an Indigenous parent filed a human rights application against a sports organization and the City of Mississauga for displaying Indigenous-themed imagery on team banners and apparel and in municipally-operated recreational facilities.

The OHRC reached a settlement with the City of Mississauga, in which the municipality agreed to:

- Remove all Indigenous-themed mascots, symbols, names and imagery from the city's sports facilities that are associated with non-Indigenous sports organizations.

- Develop a policy on the use of Indigenous images and themes at its sports facilities, in collaboration with Indigenous organizations.
- Supplement its Diversity and Inclusion training with expanded material addressing reconciliation and Indigenous peoples.

Swastika Trail

In 2022, the township of Puslinch decided to rename Swastika Trail to Holly Trail. The road received its name when swastikas were associated with well-being, before their appropriation by Nazis and reinterpretation as a hate symbol. While some residents did not want to be associated with the symbol's modern interpretation, others argued that renaming the road would erase a part of the community's popular history as a resort destination.

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[1] For more information about rights and responsibilities under the *Code*, see the OHRC's e-learning module Human Rights 101 3rd edition (2020).

[2] For more on HRBA, see Government of Canada's fact sheet here and the United Nations Sustainable Development group paper here.

The Human Rights-Based Approach Framework

A how-to for advocates and researchers

Ontario
Human Rights Commission
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droits de la personne

Learn more about how the Human Rights-Based Approach (HRBA) framework can help you apply a human rights lens to your research and campaigns, and build human rights capacity and expertise to move the dial on specific issues.

What is the HRBA Framework?

The HRBA Framework is an analytical and educational tool available to service providers, including non-profits and government services, employers, researchers, advocates as well as provincial and municipal governments.

It supports the user in planning, developing and delivering human rights-focused, inclusive, equitable and accessible policy, programs and services, and helps mitigate discrimination and disproportionate adverse impacts on people.

Through probing human rights questions and considerations, the HRBA Framework educates and supports you to think differently about human rights and fulfilling your obligations under the *Code*, which leads to better outcomes for everyone.

Asking the right questions will help you make sure human rights inform your advocacy efforts by:

- Strengthening your advocacy and research through analysis of human rights
- Providing evidence-based research, analysis, and rationale for your advocacy campaigns or human rights claims
- Revealing issues of systemic discrimination and placing them in the context of human rights obligations.

Ontario's Human Rights Code

The Ontario *Human Rights Code* is for everyone. It is a provincial law that gives everybody equal rights and opportunities without discrimination in areas such as jobs, housing and services. The *Code's* goal is to prevent discrimination and harassment because of 17 protected grounds, in five social areas.

The OHRC educates people and organizations across Ontario about human rights obligations and policies. We also provide tools, such as the HRBA Framework, to help put those policies into practice.

Why should I use the HRBA Framework in my advocacy and research?

The HRBA Framework can help you:

1. **Identify the human rights context** of the policies and programs you are advocating for or researching.
2. **Consider every aspect of your campaign or project** and how it relates to human rights and advocacy.
3. **Review existing** government **policies, programs or services** with a human rights lens.
4. **Support your research and analysis** to consider and reflect human rights obligations and principles.
5. **Develop options and recommendations** based on human rights principles and obligations that centre the human rights of impacted communities.
6. **Monitor** to assess human rights' impacts of government, employers and service providers' policies and programs
7. **Capture your evidence-based research, analysis and rationale** for future reference (for example, for use during campaigns).

Case study – The power of focusing on human rights

In 2011, the OHRC led a consultation on human rights, mental health and addictions. Many people with mental health or addiction disabilities told the OHRC at the time that they were largely unaware that the Code prohibits discrimination based on a psychiatric disability or addiction in housing, employment and when receiving services.

The OHRC also heard that many service providers were unaware of their responsibilities under the *Code* to uphold the human rights of people with mental health disabilities or addictions. These same organizations told the OHRC that they need guidance on how to meet their duty to accommodate the individual needs of people with mental health or addiction disabilities.

This situation in not unique. Across many sectors, discrimination persists because many service providers and other duty-holders are unaware of their *Code*-related responsibilities, and systemic discrimination goes unaddressed.

This is where advocacy organizations and researchers – equipped with human rights capacity developed with the support of the HRBA Framework – can align their research, recommendations and other advocacy activities around legal obligations of governments and service providers to uphold human rights.

Related OHRC policies to support advocates

To get the most out of the HRBA Framework, the OHRC recommends using it in conjunction with other related OHRC policies:

- Policy statement on human rights in COVID-19 recovery planning
- Policy on ableism and discrimination based on disability
- Policy on preventing discrimination based on mental health disabilities and addictions
- Policy and guidelines on racism and racial discrimination
- Policy on human rights and rental housing
- Count me in! Collecting human rights-based data
- COVID-19 and Ontario's Human Rights Code – Questions and Answers
- Human Rights Code Cards

The Human Rights-Based Approach Framework

A how-to for employers

Ontario
Human Rights Commission
Commission ontarienne des droits de la personne

Learn more about how the Human Rights-Based Approach (HRBA) framework can help you apply a human rights lens to your workplace policies, programs and services and support *Human Rights Code*-protected groups**.**

What is the HRBA Framework?

The HRBA Framework is an analytical and educational tool available to service providers, including non-profits and government services, employers, researchers, advocates as well as provincial and municipal governments.

It supports employers like you in creating work-based policies and programs in a way that mitigates discrimination and disproportionate adverse impacts on all employees.

Through probing human rights questions and considerations, the HRBA Framework educates and supports you to think differently about human rights and fulfilling your obligations under the Code, which leads to better outcomes for everyone.

Asking the right questions will help you comply with Ontario's *Human Rights Code (Code)* as an employer and provide you with the following outcomes:

- Discrimination-free work environment that respects the dignity of all employees
- New mechanisms to address issues of systemic discrimination
- Position yourself to meet the needs, and rights, of all the people you employ.

Ontario's *Human Rights Code* in your workplace

The Ontario *Human Rights Code* is for everyone. It is a provincial law that gives everybody equal rights and opportunities without discrimination in areas such as jobs, housing and services. The *Code's* goal is to prevent discrimination and harassment because of 17 protected grounds, in five social areas, one of which is employment.

The *Code* states that every person has a right to equal treatment with respect to employment without discrimination or harassment because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

The right to equal treatment with respect to employment covers every aspect of the workplace environment and employment relationship, including job applications, recruitments, trainings, transfers, promotions, apprenticeship terms, dismissals and layoffs. It also covers rates of pay, overtimes, hours of work, holidays, benefits, shift work, disciplines and performance evaluations.

Workplace policies

You can use the HRBA Framework to develop human rights-based employment policies, such as:

- Flex-time policies to help your employees balance their work with care-giving obligations (relates to the Code ground of family status)
- Policies on uniforms or hours of work that consider your employees' religious observances (relates to the Code ground of creed)
- Recruitment policies that provide for widely accessible job ads that allow anyone to apply, rather than using word-of-mouth recruitment that tends to result in hiring people of the same groups as are already in the organization (could relate to the Code grounds of gender, race, or citizenship)

Many pieces of legislation grant specific powers and responsibilities to employers in Ontario such as, the *Occupational Health and Safety Act, 1990*, *Employment Equity Act, 1995*, *The Workplace Safety and Insurance Act, 1997*, *Employment Standards Act, 2000*, *Accessibility for Ontarians with Disabilities Act, 2005*, *Working for Workers Act, 2021*.

With this authority comes a human rights responsibility. The *Code* prohibits workplace policies or programs that have a disproportionate adverse impact on people or groups that identify with one or more *Code* grounds.

The courts have said that because of the importance of the principles set out in the *Code*, it should be given a broad and generous interpretation. When there is a difference or conflict between the *Code* and another Ontario law, the *Code* has primacy unless the other law specifically states otherwise.

Why should I use the HRBA Framework in my workplace?

The HRBA Framework can help you:

1. **Identify the human rights context** of the organizational policies and programs you are developing.
2. **Save time and effort** by considering every aspect of your project at the planning stage, rather than after it has already been implemented.
3. **Work with impacted communities** to develop appropriate engagement processes.
4. **Conduct research and analysis** to consider and reflect human rights obligations.
5. **Capture** your evidence-based research, analysis, and rationale for future reference.
6. **Develop options and recommendations** to respond to the rights, needs, and perspectives of impacted communities.

7. **Engage in decision-making** to thoroughly consider and address human rights obligations.
8. **Uphold human rights** when developing and delivering organizational policies and programs.
9. **Monitor/evaluate** outcomes of policies and programs to assess human rights impacts.
10. **Become an expert** in human-right policy and program development.

Example – Dress codes in your workplace

The HRBA Framework can help you to design inclusive rules for all employees, including men and women, people with disabilities, and anyone who needs accommodation for religious reasons.

For example, your can develop a dress code or dress rules that meet your business needs if they comply with the Code, such as requesting that your employees wear a uniform or a protective gear. However, you must *Human Rights Code Cards* make sure that your organization's uniform policy does not undermine your employees' dignity and right to fully participate in the workplace.

An employer should be prepared to prove that any sex-linked differences in the dress code justify occupational requirements. The dress code states that religious head coverings of any type may be worn with a uniform, and women can choose to wear pants instead of a skirt. Female employees who wish to dress modestly for religious reasons appreciate the option of being able to wear ankle-length skirts without needing to make an accommodation request.

Discriminatory barriers often arise due to requirements or practices that seem neutral – such as imposing a dress code at work – but have unintended negative impacts on people protected under Code grounds such as gender, sex or creed.

Related OHRC policies to support employers

To get the most out of the HRBA Framework, the OHRC recommends using it in conjunction with other related OHRC policies:

- Policy on preventing discrimination because of gender identity and gender expression
- Policy on removing the "Canadian experience" barrier
- Human rights at work 2008 - 3rd edition
- Guidelines on developing human rights policies and procedures
- Policy on employment-related medical information
- Policy on drug and alcohol testing
- Policy on requiring a driver's license as a condition of employment
- Policy on ableism and discrimination based on disability
- Policy and guidelines on racism and racial discrimination
- Count me in! Collecting human rights-based data
- COVID-19 and Ontario's Human Rights Code – Questions and Answers
- Human Rights Code Cards

The Human Rights-Based Approach Framework

A how-to for health and human service providers

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Learn more about how the Human Rights-Based Approach (HRBA) framework can help you apply a human rights lens to your health and human services, and build human rights capacity and expertise to move the dial on specific issues.

What is the HRBA Framework?

The HRBA Framework is a an analytical and educational tool available to service providers, including non-profits and government services, employers, researchers, advocates as well as provincial and municipal governments.

It supports the user in planning, developing and delivering human rights-focused, inclusive, equitable and accessible policy, programs and services, and helps mitigate discrimination and disproportionate adverse impacts on people protected under Code grounds.

Through probing human rights questions and considerations, the HRBA Framework educates and supports you to think differently about human rights and fulfilling your obligations under the Code, which leads to better outcomes for everyone.

Asking the right questions will help you make sure human rights inform your health and human services and provide you with the following outcomes:

- Discrimination-free health and human services that respect the dignity of all Ontarians, including vulnerable groups
- New mechanism to address issues of systemic discrimination
- Position yourself to meet the needs, and rights, of all the people you employ.

Ontario's *Human Rights Code* and Service Delivery

The Ontario *Human Rights Code* is for everyone. It is a provincial law that gives everybody equal rights and opportunities without discrimination in areas such as jobs, housing and services. The *Code's* goal is to prevent discrimination and harassment because of 17 protected grounds, in five social areas.

Everyone have the right to be free from discrimination when you receive goods or services or use facilities. For example, this right applies in:

- Hospitals and health services
- Schools, universities and colleges
- Public places, amenities and utilities such as recreation centres, public washrooms, malls and parks
- Services and programs provided by municipal and provincial governments, service agencies and non-profits organizations including housing, social assistance and benefits, child welfare, policing and public transit programs.

Many pieces of legislation grant specific powers and responsibilities to health and human-services providers in Ontario such as the *Education Act, 1990*, *Public Hospitals Act, 1990,* *Health Protection and Promotion Act, 1990,* *Ontario Works Act, 1997*, *Ontario Disability Support Program Act, 1997*, *Accessibility for Ontarians with Disabilities Act, 2005,* *Health Protection and Promotion Act*, *Anti-Racism Act, 2017*, *Child, Youth and Family Services Act, 2017*, *Providing More Care, Protecting Seniors, and Building More Beds Act, 2021*[1].

With this authority comes a human rights responsibility. The *Code* requires that service delivery decisions consider all members of the communities they serve. The *Code* also requires that such decisions do not have a disproportionate adverse impact on, or target, people or groups who identify with *Code* grounds.

The courts have said that because of the importance of the principles set out in the *Code*, it should be given a broad and generous interpretation. When there is a difference or conflict between the *Code* and another Ontario law, the Code has primacy unless the other law specifically states otherwise.

Why should I use the HRBA Framework to plan and provide health and human-services?

The HRBA Framework can help you:

1. **Identify the human rights context** of the services being delivered.
2. **Save time and effort** by considering every aspect of your project at the planning stage, rather than after it has already been implemented.
3. **Work with impacted communities** to develop appropriate engagement processes, including urban and rural Indigenous communities and organizations.
4. **Conduct research and analysis** that consider and reflect human rights obligations, such as by collecting race-based data, and poverty-related information.
5. **Capture** your evidence-based research, analysis, and rationale for future reference.
6. **Develop options and recommendations** that respond to the rights, needs and perspectives of impacted communities.
7. **Engage in decision-making** that thoroughly considers and addresses human rights obligations.
8. **Uphold human rights** in service delivery.
9. **Monitor/evaluate outcomes** of policies to assess impacts on human rights.
10. **Become an expert** in human-right policy and program development.

Case study – Racial profiling in child welfare

The HRBA Framework can help you develop services that aim to protect children and ensure that you consider and address issues of bias and racial profiling before you introduce child welfare policies and tools.

For example, the Framework can help address issues in the child welfare system. Indigenous, Black and other racialized children are overrepresented in the system when compared to their proportion in the general population due to many factors, including historical and structural inequalities. This overrepresentation may be one indicator of systemic discrimination, including systemic racial profiling[2].

Systemic racial profiling refers to patterns of behaviour, policies or practices that are part of an organization or sector's structure, which create a position of relative disadvantage for racialized and Indigenous peoples. These policies, practices or behaviors may appear neutral in that they don't specifically target a particular group, but may result in situations where Black, racialized or Indigenous peoples tend to experience greater scrutiny or negative treatment.

Although many different issues could lead to involvement by child welfare authorities, biased referrals and biased decision-making among these services may play a role, including the tools used by child welfare providers to determine if a child is at risk. Although they seem neutral, risk assessment standards and tools may lean towards more positive outcomes for White people and often disproportionately harm Black, Indigenous and racialized children.

Discriminatory barriers often arise due to requirements or practices that seem neutral – such as trying to protect the welfare of children – but have unintended negative impacts on people identified by the *Code*'s prohibited grounds of discrimination, such as race.

Related OHRC policies to support health and human services delivery

To get the most out of the HRBA Framework, the OHRC recommends using it in conjunction with other related OHRC policies:

- Policy on ableism and discrimination based on disability
- Policy on ableism and discrimination based on disability
- Policy on preventing discrimination based on mental health disabilities and addictions
- Policy and guidelines on racism and racial discrimination
- Policy on human rights and rental housing
- Policy on eliminating racial profiling in law enforcement
- Count me in! Collecting human rights-based data
- Policy statement on human rights in COVID-19 recovery planning
- Policy on competing human rights
- COVID-19 and Ontario's Human Rights Code – Questions and Answers
- Human Rights Code Cards

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[1] Under the *Municipal Act*, *2001,* municipalities have broad powers to pass bylaws (subject to certain limits) on matters such as housing, health, safety and well-being of the municipality. See the HRBA Framework – A how-to for municipalities.

[2] See the OHRC's Under Suspicion: Concerns about child welfare report on racial profiling including in child welfare.

The Human Rights-Based Approach Framework

A how-to for municipalities

Ontario
Human Rights Commission
Commission ontarienne des droits de la personne

Learn more about how the Human Rights-Based Approach (HRBA) framework can help you apply a human rights lens to support municipal by-laws, policy, program and service system planning and implementation in a way that mitigates discrimination and disproportionate adverse impacts on *Code*-protected groups.

What is the HRBA Framework?

The HRBA Framework is an analytical and educational tool available to service providers, including non-profits and government services, employers, researchers, advocates as well as provincial and municipal governments.
It supports municipalities and municipal bodies such as local service boards and corporations in creating municipal by-laws, polices, programs and services to meet the needs, and rights, of all members of their communities.

Through probing human rights questions and considerations, the HRBA Framework educates and supports you to think differently about human rights and fulfilling your obligations under the Code, which leads to better outcomes for everyone.

Asking the right questions will help you comply with the Ontario's *Human Rights Code (Code)* and provide you with the following outcomes:

- Discrimination-free and accessible municipal programs, policies and services
- Equitable municipal policies, programs and services that meet the needs of vulnerable groups
- Municipal by-laws, policies, programs and services that address issues of systemic discrimination

Ontario's *Human Rights Code* and municipal legislation

The Ontario *Human Rights Code* is for everyone. It is a provincial law that gives everybody equal rights and opportunities without discrimination in areas such as jobs, housing and services. The *Code's* goal is to prevent discrimination and harassment because of 17 protected grounds, in five social areas.

Many of the service areas that are protected by the *Code* are the responsibility of municipal governments to design and / or deliver, such as social assistance, health, policing, housing, recreation, library, public transportation, road construction and water services.

Municipalities are employers of police officers, social workers, building and maintenance workers and other workers who provide municipal services. In some instances, they may be responsible for rental housing units. They plan and promote economic and social development, and are partners and leaders in community development.

Under the *Municipal Act, 2001* and the *City of Toronto Act, 2006,* municipalities have broad powers to pass by-laws (subject to certain limits) on matters such as housing, health, safety and well-being of the municipality, and to protect persons and property.

The *Planning Act, 1990* provides a framework for municipalities to make land use decisions to fit local needs and circumstances. It also recognizes human rights as part of the planning process.

If your municipality was restructured, it may have its own special Act that establishes particular aspects of its governance or structures, for example, the *Town of Haldimand Act, 1999*; the *City of Hamilton Act, 1999*; the *Town of Norfolk Act, 1999*; the *City of Ottawa Act, 1999*; the *City of Greater Sudbury Act, 1999*, and the *City of Toronto Act, 2006*.

Many other pieces of legislation also grant specific powers and responsibilities to municipalities in Ontario such as the *Emergency Management and Civil Protection*

Act, 1990, *Line Fences Act, 1990*, *Police Services Act, 1990*, *Building Code Act,1992*, *Municipal Elections Act, 1996*, *Fire Protection and Prevention Act, 1997*, *Ontario Works Act, 1997*, *Safe Drinking Water Act, 2002*, and the *Accessibility for Ontarians with Disabilities Act, 2005*.

With this authority also comes a human rights responsibility. The Code requires that municipal decisions consider all members of their communities. The Code also requires that such decisions do not disproportionately impact or target people protected under Code grounds.

The courts have said that because of the importance of the principles set out in the *Code*, it should be given a broad and generous interpretation. When there is a difference or conflict between the *Code* and another Ontario law, the *Code* has primacy unless the other law specifically states otherwise.

Why should municipalities use the HRBA Framework?

The HRBA Framework can help you:

1. **Identify the human rights context** of the policy or program proposal.
2. **Save time and effort** by considering every aspect of your project at the planning stage, rather than after it has already been implemented.
3. **Work with impacted communities** to develop appropriate engagement processes, including rural Indigenous communities and organizations.
4. **Conduct research and analysis** that consider and reflects human rights obligations.
5. **Capture** your evidence-based research, analysis, and rationale for future reference.
6. **Develop options and recommendations** that respond to the rights, needs and perspectives of impacted communities.

7. **Engage in decision-making** that thoroughly considers and addresses human rights obligations.

8. **Uphold human rights** in policy and program implementation and service delivery.

9. **Monitor/evaluate** outcomes of policies to assess human rights' impacts.

10. **Become an expert** in human-right policy and program development.

Case study – Migrant workers in the Town of Kingsville

In August of 2021, the Town of Kingsville passed an interim control by-law prohibiting any person from using any lands, buildings, or structures for the purpose of housing "agricultural workers" anywhere other than on the agricultural lands where they were employed until a housing study was completed.

Designating a housing type based on the characteristics of the people who live there, creates a serious risk of "people zoning" that is inconsistent with the OHRC's guidance. What Kingsville was contemplating would create a significant barrier to migrant workers being able to live in town and likely violates the Ontario *Human Rights Code* (*Code*).

Migrant workers are already subject to extensive discrimination in their lives and work. Under the *Code*, Kingsville has an obligation to make sure that the existing vulnerable position of migrant workers is not further exacerbated by town policies or by-laws.

Based on human rights obligations, the OHRC called on Council to remove any barriers that have a discriminatory effect on migrant workers as soon as possible, to permit the establishment of off-farm housing for migrant workers within its boundaries in a manner consistent with other forms of housing, and to actively work to improve the living and working conditions of all migrant workers who live

and work in Kingsville. The Town revised its by-law to permit housing used by migrant workers anywhere in their community, after meeting with the OHRC and other stakeholders.

Discriminatory barriers often arise due to requirements or practices that seem neutral – such as designating housing for migrant workers - but have unintended negative impacts on people identified by the *Code*'s prohibited grounds of discrimination, such as race and citizenship.

Using the HRBA Framework while developing zoning by-laws to expand housing options for migrant workers would have ensured that discriminatory barriers or potential barriers that prevent people from accessing housing were considered and addressed *before* the by-law was introduced. This would have prevented discrimination and saved time and resources by getting it right the first time.

Related OHRC policies to support municipalities

To get the most out of the HRBA Framework, the OHRC recommends using it in conjunction with other related OHRC policies, such as, but not limited to:

- In the Zone, housing, human rights and municipal planning
- Policy on human rights and rental housing
- Policy on eliminating racial profiling in law enforcement
- Policy on ableism and discrimination based on disability
- Policy on preventing discrimination based on mental health disabilities and addictions
- Policy and guidelines on racism and racial discrimination
- Policy on competing human rights
- Count me in! Collecting human rights-based data
- Policy statement on human rights in COVID-19 recovery planning
- COVID-19 and Ontario's Human Rights Code – Questions and Answers
- Human Rights Code Cards

The Human Rights-Based Approach Framework

A how-to for provincial policy and program makers

Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Learn more about how the Human Rights-Based Approach (HRBA) framework can help you apply a human rights lens to support policy, program and service system planning and implementation in a way that mitigates discrimination and disproportionate adverse impacts on *Code*-protected groups.

What is the HRBA Framework?

The HRBA Framework is an analytical and educational tool available to all broader public sector entities as well as provincial and municipal governments.

It supports the user to develop and deliver human rights-focused, inclusive, equitable, accessible, and responsive policy, program, and service initiatives.

It supports the province in creating by-laws, polices, programs and services to meet the needs, and rights, of all members of their communities.

Through probing human rights questions and considerations, the HRBA Framework educates and supports you to think differently about human rights and fulfilling your obligations under the Code, which leads to better outcomes for everyone.

Asking the right questions will help you comply with the Ontario's *Human Rights Code (Code)* and provide you with the following outcomes:

- Discrimination-free and accessible provincial policy, program and services aligned with OPS equity tools[1]
- Equitable municipal policies, programs and services that meet the needs of people protected under Code grounds
- Provincial by-laws, policies, programs and services that address issues of systemic discrimination

Ontario's *Human Rights Code* and provincial policy

The Ontario *Human Rights Code* is for everyone. It is a provincial law that gives everybody equal rights and opportunities without discrimination in areas such as jobs, housing and services. The *Code's* goal is to prevent discrimination and harassment because of 17 protected grounds, in five social areas.

Everyone has the right to be free from discrimination when they receive goods or services, or use facilities. For example, this right applies in:

- Hospitals and health services
- Schools, universities and colleges
- Public places, amenities and utilities such as recreation centres, public washrooms, malls and parks
- Services and programs provided by municipal and provincial governments, service agencies and non-profits organizations, including housing, social assistance and benefits, child welfare, policing and public transit services.

Many pieces of legislation grant specific powers and responsibilities to provincial bodies and service providers in Ontario, such as the *Health Protection and Promotion Act, 1990, Education Act, 1990, Public Hospitals Act, 1990, Ontario Works Act, 1997*, *Ontario Disability Support Program Act, 1997*, *Accessibility for Ontarians with Disabilities Act, 2005*, *Health Protection and Promotion Act*, *Anti-Racism Act, 2017*, *Child, Youth and Family Services Act, 2017*, *Providing More Care, Protecting Seniors, and Building More Beds Act, 2021*.

With this authority also comes a human rights responsibility. The *Code* requires that service delivery decisions consider all members of the communities they serve. The *Code* also requires that such decisions do not have a disproportionate adverse impact on, or target, people or groups who identify with *Code* grounds.

While the HRBA Framework will support organizations in meeting their human rights obligations, it does not replace receiving legal advice where necessary.

Why should provincial policy and program makers use the HRBA Framework?

The HRBA Framework can help you:

1. **Identify the human rights context** of the policies and programs being developed.
2. **Work with impacted communities** to develop appropriate engagement processes
3. **Conduct research and analysis** that considers and reflects human rights obligations
4. **Develop options and recommendations** that respond to the rights, needs and perspectives of impacted communities.
5. **Engage in decision-making** that thoroughly considers and addresses human rights obligations.
6. **Uphold human rights** in policy and program development and delivery.
7. **Monitor/evaluate outcomes** of policies to assess human rights' impacts.

Case study – Online Health Card Renewal Service

In January 2020, the government of Ontario launched an online Ontario Health Card Renewal Service. This online service allowed citizens to renew their health card online if they had a current driver's license and met other criteria (such as not needing a new photo, which is required every 10 years). However, many citizens with disabilities do not have a driver's license. As many people with disabilities also face barriers in travel, it is especially important that they are able to access, use and benefit from the convenience of any online services available to avoid travel and in-person services.

Several years ago, the Ministry of Transportation introduced the Ontario Photo Card at the request of the disability community. This was an excellent initiative to offer people with disabilities and others who do not have a driver's license an equal opportunity to obtain an official government identification card with a photo. Unfortunately, the Ontario Photo Card was not accepted as identification in the new online health card renewal system, so many people with disabilities were unable to use this option.

After the disability rights communities made their concerns known, the government addressed this barrier for people with disabilities and older adults by allowing the use of the Ontario Photo Card as an alternative so they could equally benefit from the new online service.

How the HRBA Framework could have helped

Discriminatory barriers often arise due to requirements or practices that seem neutral - such as requiring a driver's licence to access another service - but have unintended discriminatory impacts on people under a ground that is protected by the Code such as age or disability.

Using the HRBA Framework while developing the online Health Card Renewal system would have ensured that discriminatory barriers or potential barriers that prevent people from equally accessing and participating in the service were

considered and addressed *before* the service was released to the public. This would have prevented discrimination, and saved time and resources by getting it right the first time.

Related OHRC policies to support the province

To get the most out of the HRBA Framework, the OHRC recommends using it in conjunction with other related OHRC policies, such as, but not limited to:

- Policy statement on human rights in COVID-19 recovery planning
- Policy on ableism and discrimination based on disability
- Policy on preventing discrimination based on mental health disabilities and addictions
- Policy and guidelines on racism and racial discrimination
- Policy on human rights and rental housing
- Count me in! Collecting human rights-based data
- COVID-19 and Ontario's Human Rights Code – Questions and Answers
- Human Rights Code Cards

[1] **Relevant OPS equity tools include:** Anti-Racism Impact Assessment (ARIA), Indigenous Impact Assessment, Seniors Impact Tool, Francophone Lens, Gender and Diversity Analysis, OPS Inclusion Lens, Accessibility Review Tool and the Health Equity Impact Assessment.