

SECTION: Application

Effective date: February 25, 2005

**SUBJECT: RENTAL OF PREMISES – LIMITATION ON THE NUMBER OF
OCCUPANTS FOR A DWELLING**

Purpose:

This policy is intended to assist in the understanding and application of *The Human Rights Code* (“*The Code*”). Where there is any conflict between this policy and *The Code*, *The Code* prevails.

Context:

The Manitoba Human Rights Commission recognizes that standards, such as the Canadian National Occupancy Standard of the Canada Mortgage and Housing Corporation, provide guidance, for example, as to the number of bedrooms a dwelling should have to provide a couple or family with freedom from overcrowding. The Commission also recognizes, however, that stringent application of standards limiting the number of occupants in a rental premise may lead to unreasonable discrimination, on the basis of family status or other protected characteristic.

The Commission considers it to be a contravention of s.16 of *The Code* for a landlord or rental agent to have a general policy or standard which sets out a maximum number of persons able to occupy a given accommodation, unless there is reasonable cause for such a standard or policy.

In determining whether reasonable cause exists for any such standard or policy, the Commission will apply the general principles set out by the Supreme Court of Canada in British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights) (1999) 36 C.H.R.R. D/129 (“Grismer”)¹ and in British Columbia (Public Service Employee Relations Comm.) v. B.C.G.E.U. (1999), 35 C.H.R.R. D/257 (“Meiorin”)². (See also Commission policy # G-4 “Employment: *Bona Fide* and Reasonable Cause”.)

According to this approach, once a standard, policy or rule has been shown to be discriminatory on the basis of any of the enumerated grounds under *The Code*, such as age (children), ancestry, national origin or family status, a landlord or rental agent must

¹ In *Grismer*, a standard in the context of the provision of services was assessed.

² In *Meiorin*, a standard in the context of employment was assessed.

show on a balance of probabilities that:

1. the standard, policy or rule, which was adopted by the landlord or rental agent, was rationally connected to the provision of that rental accommodation. The Commission will look at what the challenged standard, policy or rule was designed to achieve, how that relates to the rental accommodation being provided, and whether there is a rational connection between the two;
2. the landlord or rental agent adopted the particular policy, standard or rule in an honest and good faith belief that it was necessary to the fulfillment of the legitimate purpose with respect to the provision of the rental accommodation. Information as to the circumstances surrounding the adoption of the policy, standard or rule and considerations underlying the development of the policy, standard or rule will be considered by the Commission;
3. the policy, standard or rule is reasonably necessary to accomplish the legitimate purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual applicants sharing the characteristics of the complainant without imposing undue hardship upon the rental accommodation provider. In addressing the reasonableness of the standard or policy, the Commission will consider factors such as whether:
 - a. the standard or policy excludes members of a particular group on impressionistic assumptions;
 - b. the standard or policy treats one particular group more harshly than others without apparent justification;
 - c. alternative approaches to the standard or policy were investigated and considered; and
 - d. the policy or standard has been designed to minimize the burden on rental applicants required to comply with the policy or standard.

In addressing undue hardship, the Commission will consider factors such as whether:

- a. it is necessary that all rental applicants meet the single standard or comply with the single policy for the landlord or rental agent to accomplish its legitimate purpose;
- b. the legitimate purpose could be accomplished through less discriminatory ways of providing the rental accommodations;
- c. the provider of the rental premises has searched for potential reasonable accommodations of the special needs of an applicant, which are based on

a protected characteristic, and considered same.

Each case will be assessed on the basis of its individual merit and circumstances.

APPROVED BY:

"Janet Baldwin"
Chairperson

March 9, 2005
Date