

BULLETIN – SECTION 95 (56.1) HOUSING CO-OPERATIVES



CALCULATING HOUSING CHARGES FOR HOUSEHOLDS IN RECEIPT OF PUBLIC ASSISTANCE

October 2008

In 1995, a co-op member filed a human rights complaint with the Ontario Human Rights Commission against Caroline Co-operative Homes. The complaint alleged discrimination in accommodation based on receipt of public assistance, which would be a violation of section 2(1) of the Ontario Human Rights Code. It took 11 years for a final decision to be reached on the complaint.

On July 24, 2006, the Tribunal issued its decision. The Tribunal found that the Co-operative had discriminated against the co-op member, contrary to section 2(1) of the Code. The Co-operative appealed the Tribunal's decision to the Ontario Divisional Court and the former co-op member cross-appealed. Neither appeal was ultimately pursued.

This Bulletin outlines the issues surrounding the case and the decision and how the Tribunal's finding affects Section 95 (formerly 56.1) housing co-operatives and any other co-ops that have agreements with similar rules.

The complaint

The source of income for the co-op member filing the complaint was public assistance. Due to a change in the Co-operative's understanding of its funding agreement with the Canada Mortgage and Housing Corporation (CMHC), the Co-operative changed the way it calculated housing charges for members in receipt of public assistance. The Co-operative began to

charge the member the maximum shelter component with a deduction for some but not all of the member's hydro costs.

When the member's assisted housing charge was calculated the same way as other members who were not in receipt of public assistance, she was able to receive additional government assistance to cover all of her accommodation expenses, including hydro and insurance costs. The member felt that she was being treated differently from other members paying an assisted housing charge, but whose income was not from public assistance. She believed this was contrary to the *Ontario Human Rights Code* (Code).

The member also asserted that the Co-operative did not treat her with respect and dignity. She felt that she was treated differently from other members that were working and income tested. And she believed that the Co-operative had not adequately followed up on her correspondence and concerns about the change in calculating her assisted housing charge.



Findings of the Ontario Human Rights Tribunal

The Ontario Human Rights Tribunal did find that section 2(1) of the Code was breached and made various orders. It ordered the Co-operative to pay general damages to the Co-operative's member to compensate for the loss of the member's dignity. The Tribunal also ordered special damages to compensate for what it determined to be an incorrect calculation of assisted housing charges.

The Tribunal also made three "public interest" orders. These were as follows:

- (1) set the housing charge for its members who are in receipt of public assistance in such a way that they may pay the sum of their housing charge, hydro costs and insurance costs out of the amount they receive as the shelter component of their public assistance benefits.*
- (2) respect the dignity of its members who are in receipt of public assistance by treating their source of income in the same way they would if their income were derived from paid employment.*
- (3) refrain from having unauthorized direct dealings with the social benefits' authorities to discuss the quantum of benefits pertaining to housing available to persons in receipt of public assistance.*

The first order means that the Co-op can set housing charges for public assistance recipients differently from members with other forms of income. However, in doing so, it must deduct hydro and insurance

charges from the shelter component of a member's benefit cheque. Later we'll talk about a way that this can be done and what other expenses may need to be deducted as well.

Your co-op is expected to treat all members with respect and dignity. This includes members in receipt of public assistance. While the calculation of assisted housing charges for public assistance recipients may be different from members who are employed, co-ops must treat assisted members in the same way.

And finally, while there was no evidence to indicate that the Co-operative contacted the member's social assistance worker, with or without the member's permission, the Tribunal ordered the Co-operative not to contact social benefits workers without a member's permission. This serves as a reminder that co-ops must protect the privacy of all members and not discuss the details of a member's income without prior authorization.

Your co-op's operating agreement

Your co-op has an operating agreement with Canada Mortgage and Housing Corporation. The Section 95 operating agreement provides co-operatives with funds for income tested assistance. The complaint was about the meaning and the way section 2(9) of the Section 95 operating agreement was implemented by the Co-operative.

Section 2(9) states that "occupants receiving welfare assistance shall pay the shelter component of the welfare...or the amount



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required by application of the total payment to the rent-to-income scale identified in Schedule “A”, whichever is greater.”

Caroline Co-operative had been advised by CMHC that households receiving public assistance should pay the “full potential shelter component” of their benefit or the graduated occupancy scale, whichever was greater. This effectively meant that public assistance recipients were required to be treated differently from other RGI recipients.

The Ontario Divisional Court and the Court of Appeal found that CMHC, as a federal body with a right to make rules about its own spending powers, was permitted to set these differing rules for public assistance recipients, compared to other rent-geared-to-income recipients. However, the Tribunal still found that the Co-operative discriminated against the member because the Co-operative should have sought clarification from CMHC about how to implement section 2(9) to ensure minimal financial impact on members in receipt of public assistance.

Schedule B of the operating agreement for the Co-operative set out the rules for calculating housing charges for fully serviced accommodation for households in receipt of income-tested assistance. Fully serviced means “supplied with heat, water, hot water, stove and refrigerator”. If the co-op does not provide fully serviced accommodation then the co-op calculates the assisted housing charge by subtracting “the estimated local cost of heat, water and hot water for the type of units” in the co-op. If a stove and refrigerator are not

included, then an additional amount is to be deducted.

The operating agreement does not include the cost of light and power or insurance for the household’s belongings. But during the hearing, CMHC’s witness confirmed that light, power and insurance costs could be included as deductions from a member’s shelter component of their benefit cheque.

A broad reading of the *Inness* decision may mean that co-ops must deduct from the maximum shelter component shelter costs as those are defined by government regulations and paid for directly by a household. These costs vary depending on the co-op and can include, in addition to hydro and contents insurance:

- hot water and hot water heater rental
- water and sewer
- gas or fuel oil.

What impact does the Tribunal’s decision have on how my co-op should calculate housing charges for households receiving public assistance?

While the Tribunal’s decision technically only applies to Caroline Co-operative, it effectively applies to all Section 95 housing co-operatives in Ontario. The decision might also apply to other housing co-operatives that have agreements with similar rules. You should check your co-op’s funding agreements and seek legal advice if you think that your co-op’s agreements impose similar requirements.



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The Tribunal's decision dealt with households that receive public assistance from the province, which means Ontario Works and the Ontario Disability Support Payment.

The Tribunal ordered Caroline Co-operative to make sure that all hydro and insurance costs be covered by a household's shelter component. The Co-operative's units are individually metered, and members pay hydro costs directly to the hydro company. Hydro costs covered heating, hot water, light and power. Therefore, the Tribunal expects that, in the future, the Co-operative will deduct the costs of these services and the cost of insuring the member's belongings from the maximum shelter component available. While this may sound simple, implementing this decision presents challenges to both a co-op's members and the co-operative.

The most significant challenge is that the cost of utilities is based on individual consumption, and the costs change every month. This means that a strict reading of the Tribunal's decision would mean that member households and co-operatives would not know from month-to-month what their actual assisted housing charge would be. This is problematic for the member because benefit cheques are based on the actual housing charges paid to the co-operative. Overpayment of the shelter component in any month may require repayment. And it would also mean that the member would need to submit proof of monthly utility payments to the co-op. On the other hand, calculating charges on

a monthly basis for actual utility costs would be an administrative nightmare for the co-op.

So what does this mean? What would be reasonable and fair to members receiving public assistance? We suggest the best approach would be for the co-op to set fair and accurate estimates for utility charges for the co-op's units each year. The co-op should also have a method for members to request a review of the estimates for their unit type and size if they can demonstrate that the estimates are not covering their actual costs. This would mean that all households would receive the same deductions for utilities if they lived in the same type and size of unit unless they could demonstrate that the costs for their unit were different.

Remember that the Tribunal's decision also required that insurance costs be accounted for as well. All co-op members should be encouraged to have insurance for their personal belongings. Co-ops must now permit households in receipt of public assistance to cover insurance premiums from the shelter component of their benefits cheque. For example, CHF Canada, through its Memberguard program, offers co-op members an affordable way to insure their belongings. And the monthly fees don't change frequently. Documentation could be collected once a year and used to calculate the member's housing charge.

If your co-op is unsure about what other shelter costs should be deducted, you should seek legal advice.



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Here is an example of how to calculate the assisted housing charge:

Maximum shelter allowance (ODSP) for a 2-person household	\$700
Subtract monthly insurance premium (if member carries insurance)	\$ 15
Subtract estimated monthly utility costs for a two bedroom unit	\$ 80
Assisted Housing Charge =	\$605

But my housing co-operative already doesn't have enough income-tested assistance to go around. We can't afford to set deductions that reflect the true cost of utilities and insurance.

True, many Section 95 co-ops don't have enough funds for income testing. But this decision is based on ensuring that all households are treated in a way that follows the *Ontario Human Rights Code*. The decision of the Tribunal only requires the co-op to make changes to the way they calculate housing charges for public assistance recipients.

CHF Canada and housing co-operatives are working on ways for co-ops to get more subsidy funds. Subsidy is scarce because of low interest rates and the way federal assistance has been calculated over the years. The Section 95 fix to the calculation of federal assistance when the mortgage renews has helped some co-ops get additional funds. CHF Canada is meeting with federal Members of Parliament urging them to provide increased assistance to existing Section 95 housing co-ops to enable them to house more low-income members. We are also approaching provincial

governments about making rent supplement funds available. And CHF Canada has launched a campaign with other housing partners urging the government to help the over three million Canadians in core housing need.

If the co-op covers all of a member's utility costs, where is the incentive for the member to be environmentally responsible by saving energy?

It's in our collective interest to be concerned about our environment. And many co-ops are initiating environmental sustainability programs that include ways to save energy. But public assistance recipients should not be penalized when their energy costs exceed the estimate for their unit. There are many reasons why costs may differ including household size, and special health and unit conditions. Public assistance gives households limited funds to meet their needs. If the cost of utilities and insurance and the assisted housing charge are not covered within the shelter component, then members are forced to choose between paying to heat their home or putting food on the table.



Have questions or need help figuring out what changes your co-op needs to make?

Your co-op may want some advice about how to make changes to an existing subsidy policy or your method of calculating assisted housing charges. You can contact your local federation or CHF Canada at **1.800.465.2752**.

A copy of the Tribunal's decision can be found at <http://www.canlii.org/>, by searching "Iness" under case name.