

Research Memorandum: Accessible Housing for Ontarians with Disabilities

by Angela Yuan, J.D Candidate at the University of Toronto Faculty of Law

1. Research Question

Per the 2017 census, 6.25 million Canadians (approximately 22.3% of the population) live with a disability, 31.6% of whom are over the age of 65.¹ In Ontario alone, 2.62 million people live with a disability.² Yet, Ontarians with disabilities are significantly underrepresented when it comes to adequate housing. Very few housing projects have accessible units, and those that do only relegate 10-15% of the units for accessibility.³ Given that people with disabilities make up a quarter of Ontario's population (as of 2018), and that people aged 65 and older (who are more at risk of acquiring a disability) represent Canada's fastest growing age group, 10 – 15% is not enough to ensure Ontarians with disabilities' right to accessible housing.⁴ It can take over 7 years for a person with a disability to find an accessible housing unit that meets their needs, which is exacerbated by the fact that Ontario homes are becoming less and less affordable, especially in large cities like Toronto.⁵ Consequently, many Ontarians with disabilities are forced to be homeless or live in hospitals, long-term care units, and poorly resourced community

¹ "Persons with and without disabilities aged 15 years and over, by age group and sex, Canada, provinces and territories" (28 November 2018), online: *Statistics Canada* <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1310037401#tables>.

² *Ibid.*

³ "Building an Affordable and Accessible Ontario for All", (25 January 2019) at 2, online (pdf): *Spinal Cord Injury Ontario* <<https://sciontario.org/wp-content/uploads/2019/01/scio-submisison-on-increasing-housing-supply-in-ontario-2019.pdf>>.

⁴ *Supra* note 1; "The Chief Public Health Officer's Report on the State of Public Health in Canada 2014 – Changing demographics, aging and health" (8 September 2014), online: Government of Canada < <https://www.canada.ca/en/public-health/corporate/publications/chief-public-health-officer-reports-state-public-health-canada/chief-public-health-officer-report-on-state-public-health-canada-2014-public-health-future/changing-demographics.html>>

⁵ *Ibid.*

shelters, creating an “overcrowding crisis” in Ontario.⁶ These statistics go to show that currently, Ontarians with disabilities are denied adequate housing.

This memo addresses the question of whether accessible housing is a protected right of Ontarians with disabilities. As this memo will show, while Ontarians with disabilities have a protected right to accessible housing in the abstract, various provincial and municipal policies operate, in effect, to deny that right.

2. Definitions

This memo uses the definition of “disability” set out by the *Ontario Human Rights Code* (OHRC)⁷:

- a. any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- b. a condition of mental impairment or a developmental disability,
- c. a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- d. a mental disorder, or
- e. an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997

⁶ *Ibid.*

⁷ *Human Rights Code*, R.S.O. 1990, c. H.19, s 10(1).

3. Is accessible housing a protected right of Ontarians with disabilities?

Per international, national, and provincial codes, accessible housing *is* a protected right of Ontarians with disabilities in the abstract. Whether Ontarians with disabilities have a pragmatic right to accessible housing is less certain.

(a) International Policies

The United Nations' Convention on the Rights of Persons with Disabilities (UNCRPD)⁸, which Canada ratified in 2010, clearly recognizes that persons with disabilities have a basic right to adequate housing. Article 9 states that nations party to the convention “shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment... These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, *inter alia*...housing”.⁹ Article 19 recognizes the right of persons with disabilities to live in their communities with choices equal to others, which includes access to “a range of in-home, residential and other community support services”.¹⁰ Similarly, Article 28 explicitly states that nations party to the convention must recognize, and take appropriate steps to safeguard, “the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate...housing...[and] public housing programmes”.¹¹

⁸ “Convention on the Rights of Persons with Disabilities and Optional Protocol” (13 December 2006), online: *International Disability Alliance* <https://www.internationaldisabilityalliance.org/sites/default/files/documents/crpd_english.pdf>.

⁹ *Ibid* at article 9.

¹⁰ *Ibid* at article 19.

¹¹ *Ibid* at article 28.

However, it is important to note that Canada did not ratify the UNCRPD's *Optional Protocol* (which lays out the process for reporting UNCRPD violations to the Committee on the Rights of Persons with Disabilities) until 2019.¹²

(b) National Policies

Canada's Constitution and national human rights codes recognizes accessible housing as a right, but not without caveats. Many of these policies make broad, almost grandiose statements about protecting the rights of persons with disabilities yet leave avenues for those rights – including the right to accessible housing - to be violated.

Section 15(1) of the *Canadian Charter of Rights and Freedoms*¹³ (the “Charter”) states that “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”¹⁴ This implies that Ontarians with disabilities should derive benefits from housing laws and building codes equal to those without. It is important to note that *Charter* rights are not absolute – legislation that infringes on *Charter* rights may still be deemed valid under section 1 of the *Charter* – leaving open the possibility that discriminatory housing legislation can be upheld as constitutional.¹⁵

Part 1 of the *Canadian Human Rights Act*¹⁶ names disability as a prohibited ground of discrimination, and a refusal to accommodate a person with disabilities' residential needs as

¹² *Ibid.*

¹³ *The Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.

¹⁴ *Ibid* at s 15(1).

¹⁵ *Ibid* at s 1.

¹⁶ *Canadian Human Rights Act*, RSC 1985, c H-6.

discriminatory.¹⁷ However, this prohibition is not absolute. Per section 15.1, discriminatory practices are allowed in situations where there is “*bona fide* justification for that denial or differentiation”.¹⁸ “*Bona fide*” (or good faith) justification requires that accommodating a person’s (or class of persons) needs would impose “undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.”¹⁹ This means that discriminatory housing practices against Ontarians with disabilities will be allowed if the housing provider can provide a “*bona fide* justification”.

Unlike the *Human Rights Act*, the *Accessible Canada Act*²⁰ (which claims to be “an Act to ensure a barrier-free Canada”) does not explicitly mention housing or residential spaces. Instead, section 5 states that “The purpose of this Act is to benefit all persons, especially persons with disabilities, through the realization...of a Canada without barriers...particularly by the identification and removal of barriers, and the prevention of new barriers, in the following areas...(b) **the built environment**” [emphasis added].²¹ The act defines “barrier” as anything that “hinders the full and equal participation in society of persons with an impairment”.²² Whether the “built environment” includes private residences or only refers to public spaces is unclear.

A final national policy to note is the *Canadian Bill of Rights*²³, the preamble of which declares that the Canadian Parliament is founded upon principles that acknowledge “the dignity and worth of the human person and the position of the family in a society of free men and free

¹⁷ *Ibid* at s 3(1,6).

¹⁸ *Ibid* at s 15(1).

¹⁹ *Ibid*.

²⁰ *Accessible Canada Act*, SC 2019, c 10.

²¹ *Ibid* at s 5.

²² *Ibid* at s 2.

²³ *Canadian Bill of Rights*, SC 1960, c 44.

institutions”.²⁴ While the bill condemns discrimination against many identity markers (religion, race, national origin, etc.), none of those include disability. Accessible or adequate housing for disabled and non-disabled persons alike, is also not mentioned.

(c) Provincial Policies

Both the government of Ontario and the Ontario Human Rights Commission (the “Commission”) has policies supporting accessible housing as a basic right. However, similar to the national policies described in the previous section, these policies contain gaps and loopholes that, in effect, may deny Ontarians with disabilities of that right.

The Commission’s OHRC prohibits housing providers from treating people with disabilities with discrimination.²⁵ Per the code, municipalities in Ontario, as both regulators and providers of housing, must “ensure that their bylaws, processes and decisions do not target or disproportionately affect [people with disabilities].”²⁶ Ontarians with disabilities have the right to equal treatment when buying, selling, renting or being evicted from an apartment, condominium, commercial property, or hotel room.²⁷ The OHRC applies to terms and conditions in contracts and leases such as the amount of rent, security deposits, the requirement of guarantors, occupants’ rules and regulations, lease termination and eviction.²⁸ The right to housing without discrimination also includes suitable access to doors, laundry rooms, swimming pools, other common areas, repairs and other aspects of housing.²⁹ However, the OHRC does not apply if the person with a disability has a “personality conflict” with a landlord or another tenant that is “not

²⁴ *Ibid* at preamble.

²⁵ *Supra* note 6 at part 1.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

linked to a Code ground [like disability]”.³⁰ The OHRC does not specify what “personality conflict” means. It is entirely possible that a landlord’s “personality” is influenced by implicit prejudice against people with disabilities such that they can discriminate against a person with disabilities as long as it is not obvious or explicit. Furthermore, the OHRC does not apply if a person with a disability shares a bathroom or kitchen with the owner or owner’s family.³¹ This lack of protection exposes people with disabilities in such living situations to housing discrimination, including eviction or unfair increases in rent. The OHRC also does not mention whether builders have an obligation to construct barrier-free residences.

The Commission’s *Policy on ableism and discrimination based on disability* (2016)³² states that people with disabilities have the right to be free from harassment and discrimination by landlords, an agent of the landlord, or an occupant of the same building, and that housing providers have an obligation to prevent such a “poisoned” environment.³³ More broadly, under the OHRC, housing providers have a legal duty to accommodate the needs of people with disabilities, and to ensure that their housing is designed inclusively and “adapted to accommodate the needs of a person with a disability in a way that promotes integration and full participation.”³⁴ The policy lists some forms of accommodation, including adjusting tenant selection criteria, making structural modifications to units, working with outside professionals to address a person’s needs, and modifying deadlines.³⁵ However, the policy states that the duty to accommodate must be balanced with the rights of other people (i.e. housing providers, other

³⁰ *Ibid.*

³¹ *Ibid.*

³² “Policy on ableism and discrimination based on disability” (27 June 2016), online (pdf): *Ontario Human Rights Commission* < <https://www.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability>>.

³³ *Ibid* at 3-5.

³⁴ *Ibid* at 28.

³⁵ *Ibid* at 40.

tenants or occupants).³⁶ Consequently, there is no duty to accommodate if accommodation poses “undue hardship” relating to cost, health, and safety requirements.³⁷ This suggests that ultimately, the needs of Ontarians with disabilities are second to the needs of the housing provider.

The Commission’s *Policy on preventing discrimination based on mental health disabilities and addictions* (2014)³⁸ recognizes that people with mental health disabilities and addiction should be protected from housing discrimination and harassment under the protected ground of “disability”.³⁹ The protection extends to private rental housing, co-operative housing, social housing, and supportive or assisted housing.⁴⁰ Yet, the same limitations on the duty to accommodate (see the previous paragraph) applies, which again suggests that ultimately, the needs of Ontarians with mental health disabilities are second to the needs of the housing provider.

The Commission also has several policies specifically about human rights and rental housing, all of which recognize that every tenant has a right to equal treatment without discrimination from a landlord. If a tenant has a special need relating to a disability, as part of their duty to accommodate landlords many need to make changes to units, building entrances, sidewalks, or parking areas to accommodate the tenant’s disability.⁴¹ Landlords may need to make non-physical changes as well (like changing their rules, practices, or terms in the lease), particularly with tenants with mental health or developmental needs.⁴² However, per the *Policy*

³⁶ *Ibid* at 58.

³⁷ *Ibid* at 49.

³⁸ “Policy on preventing discrimination based on mental health disabilities and addictions” (31 January 2014), online (pdf): *Ontario Human Rights Commission* <https://www3.ohrc.on.ca/sites/default/files/Policy%20on%20Preventing%20discrimination%20based%20on%20mental%20health%20disabilities%20and%20addictions_ENGLISH_accessible.ppd>.

³⁹ *Ibid* at 3.

⁴⁰ *Ibid*.

⁴¹ “Policy on human rights and rental housing” (21 July 2009), online (pdf): *Ontario Human Rights Commission* at 5, <https://www3.ohrc.on.ca/sites/default/files/attachments/Policy_on_human_rights_and_rental_housing.pdf>.

⁴² *Ibid*.

on human rights and rental housing (2009), accommodations may not be required where multiple tenants share a unit or residential building.⁴³ If one tenant's needs or conduct has a negative impact on other tenants, landlords must balance and manage the legitimate concerns of all tenants, "while not tolerating any discriminatory views and preferences."⁴⁴ Yet, discrimination and prejudiced behaviour can often be subtle (like microaggressions), and most landlords are not trained on how to recognize and put an end to such behaviours. In these "balancing" situations, a tenant with a disability - who may have less of a voice compared to able-bodied tenants because of systemic oppression – may end up not having their needs addressed.

In 2001, the provincial government enacted the *Ontarians with Disabilities Act*⁴⁵. The act's stated purpose is "to improve opportunities for persons with disabilities and to provide for their involvement in the identification, removal and prevention of barriers to their full participation in the life of the province".⁴⁶ This includes a provincial obligation to consult with people with disabilities to develop barrier-free design guidelines for building construction.⁴⁷ The caveat is that the act is limited to government-owned property - it discusses the right of Ontarians with disabilities to equal access to government buildings, public transportation, educational institutions, and hospitals, but not to private residences.⁴⁸ Whether this act applies to social housing or other government-subsidized housing is unclear.

4. Are Ontarians with disabilities' right to accessible housing practically realized?

⁴³ *Ibid* at 79.

⁴⁴ *Ibid*.

⁴⁵ *Ontarians with Disabilities Act*, 2001, SO 2001, c 32.

⁴⁶ *Ibid* at s 1.

⁴⁷ *Ibid* at s 4(1).

⁴⁸ *Ibid* at ss 4, 14, 15.

While Ontarians with disabilities have a “protected right” to accessible housing in the abstract, in effect that right does not exist. In addition to the policy loopholes discussed in the previous sections, other provincial policies obstruct Ontarians with disabilities’ ability to obtain accessible housing.

a. Accessibility Standards

The Ontario government has outlined several “accessibility standards”, which are laws that government, businesses, non-profit, and public sector organizations must follow in order to “identify and remove barriers to improve accessibility for people with disabilities”.⁴⁹ These standards are developed and enforced under the *Accessibility for Ontarians with Disabilities Act*⁵⁰(AODA), which aims to achieve accessibility for Ontarians with disabilities in five areas on or before January 1, 2025.⁵¹ Per section 1 of the AODA, persons with disabilities, industry representatives, and the Ontario government work together to develop these standards, which organizations must then follow.⁵² The AODA is binding on the Crown and “applies to every person or organization in the public and private sectors of the province of Ontario, including the Legislative Assembly of Ontario”.⁵³

Currently, five standards are available: customer service, information and communication, transportation, employment, and the design of public spaces.⁵⁴ The province also proposed three new accessibility standards: healthcare, education for kindergarten to grade

⁴⁹ “About Accessibility Laws” (03 June 2015), online: *Ontario* <<https://www.ontario.ca/page/about-accessibility-laws#section-2>>.

⁵⁰ *Accessibility for Ontarians With Disabilities Act*, 2005, SO 2005, c 11.

⁵¹ *Ibid* at s 1.

⁵² *Ibid*.

⁵³ *Ibid* at ss 4, 5.

⁵⁴ *Supra* note 48.

12, and postsecondary education.⁵⁵ Penalties for non-compliance range from \$200 to \$2,000 for individuals and unincorporated organizations, and from \$500 to \$15,000 for corporations, suggesting that the government is truly committed to making the province more accessible to people with disabilities.⁵⁶ However, housing (or any form of residency accommodation) is blatantly missing – there is no housing standard, nor is there a proposed housing standard. One possible reason is political pushback on how far a standard can go. Given that the current standards are restricted to “public” areas, it is uncertain whether the province is willing to impose a housing standard on private residences or private contracting companies that build housing (even though the AODA asserts that it is binding on private sectors).

However, political pushback is no excuse. The province asserts that “the standards aim to ensure that all Ontarians can take part in everyday activities — working, shopping, taking public transit, using the Internet, attending sporting and cultural events, and enjoying parks and other public spaces.”⁵⁷ None of these “everyday activities” would be realized to their full potential without accessible housing. While encouraging accessibility in public life is important, equally important is an Ontarian with disabilities’ right to go home at the end of the day to a place that is comfortable, safe, and accessible. Lacking such a home can make it difficult for people with disabilities to participate fully in public life. For example, consider a person whose mobility is restricted and needs certain accommodations to physically leave their house. If they are unable to afford such accommodations, they cannot go to work, go to school, buy groceries, visit family, or otherwise be a thriving member of society. The COVID-19 pandemic has added another layer of need. Because of the pandemic, many people have grown accustomed to working from home,

⁵⁵ *Ibid.*

⁵⁶ “Path to 2025: Ontario’s Accessibility Action Plan” (03 June 2015), online: *Ontario* [<https://www.ontario.ca/page/path-2025-ontarios-accessibility-action-plan>].

⁵⁷ *Ibid.*

including people with disabilities. How can people with disabilities who work from home effectively earn a living if their residence is not accessible?

b. Construction: Ontario's Building Code

Ontario's *Building Code Act* (OBC)⁵⁸ lists accessibility as an objective of construction: "An objective of this Code is to limit the probability that, as a result of the design or construction of a building, a person with a physical or sensory disability will be unacceptably impeded from accessing or using the building or its facilities."⁵⁹ A key way to realize this objective is using barrier free designs, which per the OBC entails barrier-free main entrances, paths of travel (including elevators and ramps), turning spaces, passing and rest spaces, minimum doorway and corridor widths (that is adequate for wheelchairs and mobility assistive devices), power door operators, tactile walking surface indicators, illumination, barrier-free bathrooms, signage, and accessible parking.⁶⁰ Barrier-free access is also required between floors.⁶¹ It is important to note that only a fraction of a building's entrances are required to be barrier free (see Table 3.8.1.2. below).⁶²

⁵⁸ *Building Code Act Regulations*, O. Reg. 332/12.

⁵⁹ *Ibid* at s 2.2.1.1(1).

⁶⁰ *Ibid* at s 3.8.

⁶¹ *Ibid*.

⁶² *Ibid*.

Table 3.8.1.2.
Minimum Number of Pedestrian Entrances Required to be Barrier-Free
 Forming Part of Sentence 3.8.1.2.(1)

Item	Column 1 Number of Pedestrian Entrances into <i>Building</i>	Column 2 Minimum Number of Pedestrian Entrances Required to Be <i>Barrier-Free</i>
1.	1 to 3	1
2.	4 or 5	2
3.	More than 5	Not less than 50%

Despite this fairly extensive list, other provisions in the OBC limit housing providers' obligation to uphold this objective, which in effect means that accessible housing is not guaranteed to Ontarians with disabilities. For example, the OBC defines accessibility requirements for most new construction and extensive renovations of buildings (namely residential and office buildings over 3 storeys high and 600 square meters in building area), but not *all* buildings.⁶³ Existing buildings are not affected unless extensive renovation is planned, and houses are only required to abide by smoke alarm requirements.⁶⁴ Per section 3.8 of the OBC, barrier-free requirements do not apply to houses, camps for the housing of workers, buildings that are not intended to be occupied on a daily or full time basis, triplexes, and boarding houses with fewer than 8 boarders.⁶⁵ Furthermore, multi-residential apartments and hotels are only required to have a minimum of 15% of their suites be designed with "basic" accessibility features, which usually means barrier-free hallways and doorways.⁶⁶ Ontarians with disabilities

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

who live in these establishments may be excluded from barrier-free access altogether, or only be given skeletal accommodations that do not really meet their needs.

Because houses are not required to abide by accessibility standards, Ontarians with disabilities who live in houses will likely have to pay out of pocket for barrier-free modifications. The government of Ontario has a program called “The Home and Vehicle Modification Program” to help people with mobility-related disabilities.⁶⁷ The program provides funding for “eligible” adults and children to make certain home and vehicle modifications so that they can continue living in their homes, avoid job loss, and participate in their communities.⁶⁸ However, becoming eligible for the program is not easy – the person must show proof of accessing all other sources of public or private funding (including insurance policies), they must “qualify financially” (it is unclear what this means), and they must have a “substantial impairment caused by bodily injury, a birth defect or illness. It is ongoing and/or recurring and is expected to last one year or more. This impairment impedes mobility, and results in substantial restriction in the activities of daily living”.⁶⁹ This definition follows a highly medicalized model of what a disability is, suggesting that the program is intended for people who suddenly had a debilitating accident or are elderly and retired. The plethora of other kinds of disabilities is ignored. Furthermore, the income and employment disparity between people with disabilities and those without means that people with disabilities are less likely to be able to afford such home and vehicle modifications. Statistics show that the employment rate of Canadians with disabilities is

⁶⁷ “Home and Vehicle Modification Program” (08 March 2018), online: *Ontario Ministry of Children, Community, and Social Services* < <https://www.mcsc.gov.on.ca/en/mcsc/programs/social/hvmp.aspx> >.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

26.3% less than the rate of Canadians without disabilities, and that the average income of Ontarians with disabilities is 75% that of Ontarians without disabilities.⁷⁰

c. Resolving Human Rights Violations in Housing is Difficult

As this memo has so far shown, the requirements of the OHRC often exceed those of other provincial policies like the AODA and OBC. In such situations the OHRC is paramount, which means that the requirements under the code take precedence. However, the process of reporting and getting remedies for violations of the OHRC is onerous and inaccessible to the everyday person, with or without disabilities. Violations of the OHRC can be brought to a human rights tribunal. However, to prove the violation, a human defendant is needed who has access (and is willing to spend) tens of thousands of dollars to go to court. Considering that people with disabilities are less likely to have that kind of money on hand, this means that violations of Ontarians with disabilities' protected right to accessible housing go unchecked. Furthermore, the people working at the Commission (and on the tribunal) are hired by the same provincial government that enacts these discriminatory policies, adding to the difficulty of successfully bringing a case to court. While the OHRC's paramountcy may be a helpful argument in court, the decision ultimately comes down to the judge, who may or may not harbour implicit biases against people with disabilities.

5. Ensuring that Ontarians with disabilities' right to accessible housing is realized is not only possible, but practical.

⁷⁰ "Income of People with Disabilities" (April 2017), online: *The Conference Board of Canada* <<https://conferenceboard.ca/hcp/provincial/society/disability-income.aspx>>.

To ensure accordance with provincial, national, and international human rights codes, 100% of all new housing and retrofits to existing housing must be accessible. Building permits should be leveraged so that new housing plans must include 100% accessible units and amenity spaces – permits should be refused whenever the plans do not meet these standards. Completed new housing and retrofits should also be inspected to ensure compliance with 100% accessibility. Furthermore, provincial and municipal housing authorities should commit to ensuring that no public funds are used to create or perpetuate accessibility barriers.

A common myth that hinders progress is that accessible housing is physically and financially impractical. However, the concept of universal design shows that accessible housing is useful for everyone, with or without disabilities, and is very financially feasible. Per the goals stated in the previous paragraph, universal design should be incorporated into Ontario’s building code and its regulations.

a. Accessible Housing – Universal Design and “Flex” Housing

Universal design creates housing that is accessible to everyone. As stated by The Center for Universal Design at North Carolina State University, “[universal] design succeeds because it goes beyond specialization. The concept promotes designing every product and building so that everyone can use them to the greatest extent possible – every faucet, light fixture, shower stall, public telephone, or entrance. Universal design is a revolutionary but practical leap forward in the evolution of building and design procedures. When designers and manufacturers seize this concept, universal design will become common, convenient, and profitable.”⁷¹ With universal design, people can stay in their homes as their circumstances change (especially amidst the

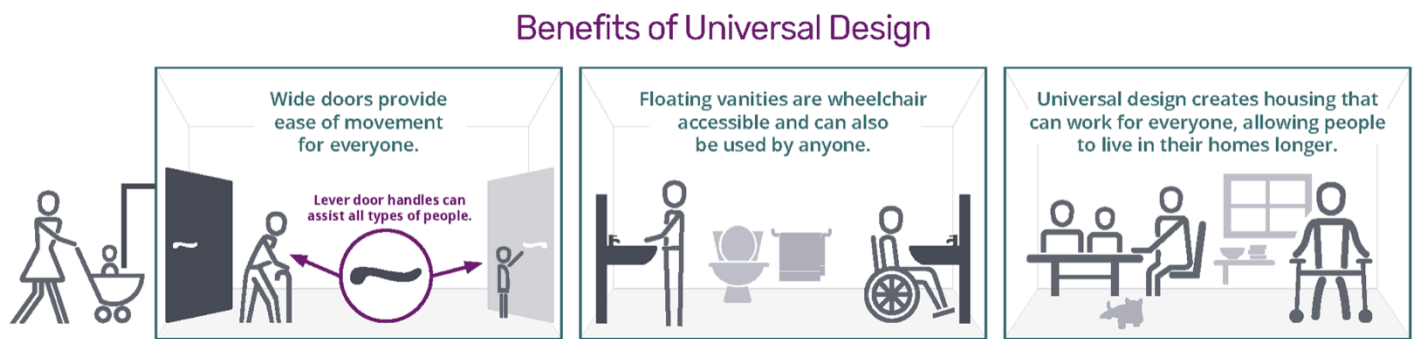
⁷¹ “Universal Design in Housing” (21 February 2006), online (pdf) at 1: The Center for Universal Design <https://projects.ncsu.edu/ncsu/design/cud/pubs_p/docs/UDinHousing.pdf>.

pandemic) without needing expensive renovations. Universal design is also appealing. A well-designed unit with universal design is aesthetically pleasing and functional for everybody, which means that it will appeal to those who need special features and those who do not. Furthermore, units with universal design are both owner and renter friendly because it extends a person's ability to live in the home and is marketable to a larger group of home buyers or renters.

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For example (see image 1 below), widening all the doors in a unit and placing them near parking or building exits help not only those who rely on mobility assistive devices, but also people carrying children, groceries, or other large items that require a facilitated ease of movement.⁷³ Reinforcing bathroom walls to support grab bars in showers and bathtubs can help prevent slipping for everyone, especially the elderly and young children. Adjustable bathroom vanities with no cabinets underneath are not only visually trendy, but necessary for people who need the extra leg room for wheelchairs or other disability-related aids.⁷⁴ Adding extra storage space for wheelchairs, walkers, and electric scooters is also helpful for those with big families, children, or simply a lot of stuff. The same goes for non-slip flooring, non-glaring lights, hand-free faucets, easy-to-reach power outlets and switches, smooth thresholds, round-cornered countertops,⁷⁵ etc.

Image 1⁷⁵



⁷⁵ Ibid.

Another form of accessible housing is adaptable design or “flex housing”, which is a standard-looking unit with features that can be customized to the specific needs of residents as their needs change, without requiring costly or extensive renovations.⁷⁶ Under this model, housing is made as adaptable as possible from the time of construction.⁷⁷ Because adaptable housing can be upgraded, expanded, divided into extra units or otherwise used for multiple purposes throughout its lifetime, it may be able to address a wider range of needs than universal design.⁷⁸

b. Accessible Housing is affordable

Housing with universal design or other flexible features that can accommodate an occupant’s changing requirements can be easily and inexpensively made. Per the *Canadian Mortgage and Housing Corporation* (CMHC), 57% of individual universal design features have no or negligible extra costs.

In a report on the cost of adaptability and accessibility features in an existing house, the CMHC also notes that converting a non-accessible home into an accessible one can be expensive, and that the average Canadian would only be able to afford to convert 1-2 of the rooms in their house (see tables 1, 3 and 5).⁷⁹ This makes universal design even more important –

⁷⁶ “Universal Housing and Adaptable Housing Models” (31 March 2018), online: Canadian Mortgage and Housing Corporation

<<https://www.cmhc-schl.gc.ca/en/professionals/industry-innovation-and-leadership/industryexpertise/accessible-adaptable-housing/universal-design-adaptable-housing-models>>.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ “Cost of Adaptability and Accessibility Features – Existing Modest House” (September 2019) online (pdf) at 2: *Canadian Mortgage and Housing Corporation* <<https://assets.cmhc-schl.gc.ca/sites/cmhc/data-research/publications-reports/research-insight/2019/research-insight-cost-adaptability-accessibility-features-existing-modest-house-69611-en.pdf?rev=2746dafc-66a5-41ca-8f4a-c76cb98416d8>>.

if homes are built with universal design at the time of construction, these costs will be mostly eliminated. Per the report, the CMHC’s findings “concretely confirm that including adaptability features in new homes significantly reduces the potential cost of making the homes accessible, compared to making similar renovations in existing homes...Canadian families would then have the chance to enjoy living longer in better-performing and more functional homes, by spending significantly less than would be required to renovate their existing homes”⁸⁰

Table 1: Cost of converting a standard existing home into an adaptable home

	Montréal	Toronto	Vancouver	Halifax	Winnipeg
Bungalow	\$34,877	\$35,540	\$33,552	\$33,203	\$31,564

Table 3: Cost of converting an adaptable existing home into an accessible home

	Montréal	Toronto	Vancouver	Halifax	Winnipeg
Bungalow	\$45,010	\$45,865	\$43,300	\$42,850	\$40,734

Table 5: Comparison of total costs of making new and existing homes accessible (Montréal)

	New Home			Existing Home			Difference	% Difference
	Adaptable Plan	Accessible Plan	Total	Adaptable Plan	Accessible Plan	Total		
Bungalow	\$14,816	\$18,505	\$33,321	\$58,797	\$16,740	\$75,537	\$42,216	227%
Semi-detached house	\$24,503	\$53,260	\$77,763	\$57,085	\$87,150	\$144,235	\$66,472	185%
Detached house	\$25,359	\$57,010	\$82,369	\$96,295	\$84,360	\$180,655	\$98,286	219%
Townhouse	\$15,617	\$36,210	\$51,827	\$100,515	\$21,300	\$121,815	\$69,988	235%
Apartment (condominium)	\$4,634	\$0	\$4,634	\$35,815	\$300	\$36,115	\$31,481	779%

Source: City of Montréal, RSMeans (see full report for a detailed description of sources)*

6. Conclusion

The purpose of this memo was to answer the question: is accessible housing a protected right of Ontarians with disabilities? This memo has shown that Ontarians with disabilities *do* have a protected right to accessible housing that needs to be practically realized.

More needs to be done by municipalities and the province of Ontario to ensure that housing is equally available to people with disabilities. The province should include universal design (or at the very least, adaptable design) as a requirement in the building code. The province

⁸⁰ Ibid at 3.

should also ensure that no public funds are used to create or perpetuate – directly or indirectly – accessibility barriers. Furthermore, the OHRC should have a zero-tolerance policy for discrimination against people with disabilities (rather than exempting discrimination in cases of “undue hardship”). This applies to all housing providers – builders, landlords, tenants, hotel staff, the Ministry of Municipal Affairs and Housing, etc. In municipalities, ideally 100% of all new housing must be made accessible when planning new housing or retrofits on existing housing. If this is practically implausible, then there should at least be a greater percentage of accessible units than inaccessible units in a housing complex. Cities should refuse building permits where the builder is not committed to this goal. Furthermore, review boards should be put in place to inspect new units and check that the construction has been completed as planned. If not, the builder has an obligation to modify the unit(s) in accordance with 100% accessibility.

People with disabilities have a right to feel safe in their homes and stay in them for as long as they want. Given that disabilities come in diverse forms and can occur at any stage in life, having provincial-wide policies on accessible housing is critical. Ontarians with disabilities’ right to accessible housing is meaningless if it only exists in theory. To achieve true equality rather than performative equality, this right (and all others) must be coupled with real, on-the-ground action.