

# HUMAN RIGHTS RENTAL HOUSING

*An Information Guide for Housing Providers*



Partners:



Métis Nation  
of Ontario 

Funder:



The Law  
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of Ontario

# THE NORTHERN HOUSING RIGHTS PROJECT

The **Northern Housing Rights Project** is a partnership between the **Centre for Equality Rights in Accommodation (CERA)** and the **Métis Nation of Ontario (MNO)** that provides human rights legal education, research and capacity-building focussed on Métis, First Nations, and Inuit people in Northwestern Ontario.

The **Centre for Equality Rights in Accommodation (CERA)** was founded in 1987 as a province-wide, not-for-profit organization dedicated to promoting human rights and ending discrimination in housing. Our public education and outreach initiatives work to intervene in cycles of discrimination that disproportionately affect low-income and marginalized individuals in the housing market. Through public education, advocacy and litigation (offered free of charge to clients) **CERA** works to address barriers that prevent individuals from accessing and maintaining housing. Our Eviction Prevention and Human Rights hotlines provide individuals with information, referrals and assistance with regard to housing matters.

We are a world leader in our field, using both domestic and international human rights law to address homelessness and poverty. In addition to our casework and public education initiatives, **CERA** performs research into housing and human rights issues and supports the enforcement of human rights by provincial, national and international commissions, agencies and organizations. For more information on **CERA**, visit us online at [www.equalityrights.org/cera](http://www.equalityrights.org/cera).

The **Métis Nation of Ontario (MNO)** represents the Métis people and Métis communities within Ontario through a province-wide governance structure at the local, regional and provincial levels. The **MNO** provides a wide array of services to its over 18,000 citizens across the province in the areas of education, training, health and housing. The **MNO** administers the Duty-to-Consult and Accommodate processes, protects and preserves the Métis Way of Life, and promotes Métis culture and heritage.

The **MNO** strives to bring about a better understanding of, and appreciation for, the dynamic history of the Métis Nation and in its contributions to the building of Canada. Since its founding in 1993, the **MNO** seeks to bring positive change to the socio-economic circumstances of Métis communities.

For more information on **MNO**, visit us at [www.metisnation.org](http://www.metisnation.org); find us on **Facebook** as *Métis Nation of Ontario*; and on **YouTube** as *M8tisNation*.

## ACKNOWLEDGEMENTS

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# INTRODUCTION

As housing providers, you are faced with the complex challenge of adhering to local and provincial laws and responding to the diverse needs of your tenants. This guide was designed to help you understand how the **Ontario Human Rights Code** applies to your policies and business practices. Here you will find an explanation of how the Code applies to housing in Ontario, along with useful tips about how to best ensure that your practices promote accessibility and inclusiveness.

It is well known that **First Nations, Métis and Inuit (FNMI)** people in Ontario experience high levels of inadequate housing and homelessness. One contributing factor is discrimination **FNMI** people face when attempting to access and maintain housing. In many cases, housing providers are unaware that they are discriminating. Nonetheless, some existing policies and practices present significant barriers to housing for **FNMI** people living in urban and rural communities<sup>1</sup>, forcing many into inadequate and frequently over-priced accommodation – or into homelessness. Despite their widely felt impact, these types of discriminatory barriers are not identified often enough in discussions of housing instability among **FNMI** communities in Ontario.

In our work, the **Métis Nation of Ontario (MNO)** and the **Centre for Equality Rights in Accommodation (CERA)** have repeatedly heard of the pervasiveness of housing discrimination directed at **FNMI** communities. In some cases, direct discrimination creates barriers to housing. However, often it is unintentionally discriminatory practices that create challenges. In many cases, discriminatory practices exist simply because housing providers are unaware of their legal obligations under the **Code**. This guide aims to clarify how the **Code** impacts housing policies and practices in Ontario, specifically with regard to the experiences of **FNMI** applicants and tenants.

## PROJECT PURPOSE

### Northern Housing Rights Project

*Promoting Housing Rights among Métis, First Nation and Inuit Communities*

**Northern Housing Rights (NHR)** is a legal education, research and capacity-building initiative directed at Métis, First Nations and Inuit people living in Northwestern Ontario, and the community workers and housing providers working with them. It is intended to be the first phase of a larger, province-wide initiative to promote human rights in housing among Métis, First Nations and Inuit people.

In 2014, the **MNO** and the **CERA** held workshops in Fort Frances, Dryden, Kenora, Geraldton and Thunder Bay. The sessions investigated experiences of housing discrimination among Métis, First Nations and Inuit people. This tool kit and guide are a direct response to the needs identified in the community.

### **PLEASE NOTE:**

**This guide is not a substitute for legal advice.** If you need legal advice, please contact a lawyer. **CERA, MNO** and its funders will not be held liable for any loss or damage caused by reliance on any statement, made negligently or otherwise, contained in this guide.

<sup>1</sup> UN-Habitat (2005), *Indigenous peoples' right to adequate housing: A global overview. Report No. 7* (Nairobi: UN-Habitat).

# RELEVANT LEGISLATION IN ONTARIO

Most Housing Providers are aware of the legislation that impacts rental housing operations. The following is an overview of relevant legislation in Ontario.

## The Residential Tenancies Act

The **Residential Tenancies Act (RTA)** sets out the rights and responsibilities of the landlord and the tenant with respect to most residential tenancies in Ontario. The Landlord and Tenant Board was established to resolve landlord and tenant disputes under the **RTA's** jurisdiction. Disputes over rent payments and maintenance are few of the items that fall under the **RTA**.

## The Housing Services Act

The **Housing Services Act (HSA)** identifies the roles and responsibilities of social housing providers in terms of affordable housing, social housing, housing for persons with disabilities and homelessness prevention. Determining subsidized rent payments, applicant criteria and waitlist priorities are some of the items that fall under the **HSA**.

## Accessibility for Ontarians with Disabilities Act

The **Accessibility for Ontarians with Disabilities Act (AODA)** became law in 2005. The goal of the legislation is to ensure a fully accessible Ontario by January 1, 2025. The **AODA** will help obligated businesses and organizations to identify, remove and prevent barriers for people with disabilities. All organizations with one or more employees have obligations under the **AODA**.

The **AODA** and its regulations impact how landlords should interact with, communicate with and provide services to their tenants. The duty to accommodate tenants with disabilities is found in **Ontario's Human Rights Code** (the "**Code**"). More information about the **Code** can be found in the next section of this toolkit. The **AODA** does not change a landlord's responsibilities under the **Code**. Landlords must still respond to individual requests for accommodation made by tenants. If there is a conflict between the **AODA** and the **Code**, the law that provides the higher level of accessibility must be followed.

There are five standards created under the **AODA**. These standards address:

1. Customer Service
2. Information and Communications
3. Employment
4. Transportation
5. Design of Public Spaces



These four standards are contained in the Integrated Accessibility Standards.

## Customer Service Standard

The **Customer Service Standard** is meant to help businesses and organizations understand that people with disabilities may have different needs and to guide them in finding the best way to help people with disabilities access goods and services. It applies to all Ontario businesses and organizations that provide goods or services to the public and have at least one employee.

# The Information and Communication Standard

The **Information and Communication Standard** is the integrated accessibility standard that is most applicable to the relationship between landlords and tenants. It will help businesses and organizations make their information accessible for people with disabilities. It applies to all Ontario businesses and organizations that have at least one employee.

## THE ONTARIO HUMAN RIGHTS CODE

### Purpose of the Code

**Ontario's Human Rights Code** (the "**Code**") is a provincial law that protects individuals and groups from discrimination and harassment in specific social areas, including accommodation (housing); contracts; employment; goods, services and facilities; and membership in a union, trade or professional association. The **Code** aims to acknowledge the dignity and worth of all Ontarians and to prevent discrimination and harassment on the basis of sixteen prohibited grounds.

### Prohibited Grounds of Discrimination

Individuals or groups cannot be discriminated against, harassed or denied housing because they fall into one or more of the following sixteen categories. These are considered prohibited grounds under the **Code**:

- Receipt of Public Assistance
- Citizenship
- Race
- Ethnic Origin
- Place of Origin
- Colour
- Ancestry
- Disability (physical, mental, addictions)
- Creed (religion)
- Age (includes being 16 or 17)
- Sex (being pregnant, breast feeding)
- Family Status
- Marital Status
- Sexual Orientation
- Gender Identity
- Gender Expression

### The Code and Rental Housing

The **Code** states that all Ontarians must have an equal opportunity to rent accommodations. The **Code** protects people from being treated unfairly by the landlord and other tenants and covers most types of rental housing, including: private market units, public subsidized units, condominiums, and co-ops. Please see "Exceptions" section for important information.

### Primacy

The **Code** is quasi-constitutional, meaning that it takes precedence over most other pieces of legislation in Ontario. In practice what this means is that, for example, if there is a conflict between the a section of the **Code** and a section of the **Residential Tenancies Act**, the **Code** takes precedence and the **RTA** might have to be amended to align with the **Code**.

## **EXCEPTIONS:**

It is important to note that the **Ontario Human Rights Code** does not apply on reserves, which fall under the **Canadian Human Rights Act**.

It is important to note that the **Code** does not apply when a tenant shares a bathroom and/or kitchen with the landlord or the landlord's family. The **Code** also allows for certain exemptions to organizations providing accommodations targeted to marginalized groups. For example, social housing that is only available to **First Nation, Inuit or Métis** tenants, or supportive housing for seniors which exclude other types of individuals is allowed. In other words, organizations are allowed to provide housing that is targeted to specific groups who tend to experience housing discrimination. However, all types of housing providers are still required to comply with fair and equitable processes in these housing programs.

## **Defining Discrimination**

Discrimination occurs when a person is treated unfairly or denied a benefit, whether intentional or not, based on a characteristic or perceived characteristic protected under the **Code**. Discrimination is often unintentional and can sometimes occur when someone is acting in good faith. For example, a landlord's decision not to rent a two-level house to a senior because they assume the stairs would be hazardous could be discriminatory because the landlord has made assumptions about the tenant's abilities.

## **Direct Discrimination**

Direct discrimination is what most people think of when they think of discrimination. When direct discrimination occurs it is usually obvious. In housing, direct discrimination includes behaviours, actions, policies, and practices that exclude a **Code** protected group from accessing and fully participating in accommodations. For example, if a landlord refused a prospective tenant because they receive social assistance or because they have children, this would constitute direct discrimination.

In both cases the landlord has blatantly refused an applicant because they belong to a protected group. The first instance is an example of discrimination on the basis of Receipt of Social Assistance and the second is on the basis of Family Status. In our work, **MNO** and **CERA** have become aware that discrimination on the basis of Receipt of Social Assistance presents a significant barrier for many housing seekers in northwestern Ontario.

**The Code stipulates that housing providers need to ensure that their personal bias and the biases of their agents do not interfere with fair and equitable treatment of tenants and applicants.**

## **Indirect or Adverse Effect Discrimination**

Indirect or adverse effect discrimination is usually subtle and is often not intentional. This type of discrimination occurs when a seemingly neutral policy, rule or practice disadvantages members of a Code protected group.

For example, a policy that requires all applicants to provide landlord references can result in indirect discrimination. Groups negatively impacted by such a policy could include youth and newcomers to Canada who might not have rental history and would therefore be unable to provide references.

As a result, the policy dictates that their applications could be denied. Although the policy appears to be fair because it is applied to all applicants equally, in practice it disadvantages particular individuals, in this example on the basis of Age or Place of Origin. This is an example of how indirect discrimination operates.

Keeping this in mind, housing providers should review their policies. If some rules are directly discriminatory, they should be amended. If some rules could result in indirect discrimination, housing providers should consider contingency plans. For example, recently divorced women may have bad or no credit as a result of the family breakdown. A contingency plan in this situation could include asking for a guarantor.

**Housing providers should review their policies and practices in light of Code obligations to ensure they do not disadvantage protected groups.**

## Multiple Grounds of Discrimination

Often discrimination in housing happens as a result of a combination of interrelated grounds. The **Code** protects people from discrimination on the basis of two or more grounds, or the effects of a combination of grounds. For example, a Métis single mother receiving social assistance who applies for an apartment might be subjected to discrimination based on her Race, Colour, Sex, Family Status, Marital Status and Receipt of Social Assistance – all at the same time. In some cases, various strands of discrimination can contribute to stereotypical thinking that might influence a housing provider’s decisions. Discrimination on multiple intersecting grounds is qualitatively different from discrimination based on an individual ground. The possible negative impacts of discrimination on multiple grounds often amount to far more than the “sum of their parts”.

Many rental housing applications request information that could be used to discriminate against applicants. Housing providers are permitted to request credit and income information and landlord references from applicants, but not much more. It is important to keep in mind that asking additional questions might put a housing provider at risk of appearing to have discriminated against an applicant. For example, asking the number and ages of an applicant’s children could be perceived that the housing provider refused an applicant due to their Family Status. Asking the gender of applicants could indicate that discrimination occurred on the basis of Sex, Gender Identity, Gender Expression or Sexual Orientation if an application is rejected.

**Housing providers should carefully review their policies and practices in light of the Code’s stipulations.**

## Discrimination based on Association

The **Code** prohibits discrimination because of a person’s relationship – either actual or presumed – with an individual or class of individuals that belong to a protected group. For example, if a housing provider refuses to rent to a mixed-race couple because one member of the couple is First Nation, the housing provider has not only discriminated against the individual who is targeted, but also against the partner.

Housing providers should not discriminate against a tenant because of their association with a **Code** protected group.



## Harassment

Harassment is defined under the **Code** as repeated behaviour (actions or words) that is or should be known to be unwelcome. The **Code** protects tenants from discriminatory harassment by housing providers, their agents, and other tenants, and housing providers have a responsibility to put an end to discriminatory harassment. Sometimes tenants confuse non-discriminatory harassment (which is covered by the Residential Tenancies Act) with discriminatory harassment.

For example, if housing provider continually stops by a unit without providing 24-hour notice, although this is inconvenient, it is not a human rights issue. Similarly, if two tenants do not get along and one often yells at another about leaving their garbage in the hallway, it is not a human rights issue. Housing Providers are obligated under the **Code** to intervene when harassment is related to a **Code** ground. For example, racial slurs and sexual harassment are considered to be discriminatory harassment and are covered by the **Code** under the following grounds: Race, Ethnic Origin, Colour, Ancestry and Sex or Sexual Orientation.

**Housing providers have an obligation to intervene when a tenant identifies discriminatory harassment.**

## Poisoned Environment & Reprisal

The **Code** prohibits retaliation against a person who has made a human rights complaint or who is helping with a complaint. For example, a property manager (housing provider's agent) who refuses to follow a housing provider's (their employer's) discriminatory policy should not be penalized or fired for this. Housing Providers can challenge a charge of discrimination if it can be shown that the apparently discriminatory policy or practice is bona fide and has a reasonable justification.

**Housing Providers cannot evict, intimidate, coerce, harass, impose a financial penalty on, deny a right, or otherwise treat a person unfairly because they tried to enforce their human rights or because they refused to violate the rights of a Code protected group.**

## Discrimination In Rental Housing

### Discrimination in Publications and Advertisements

The **Code** prohibits displaying, publishing or broadcasting notices, signs or other representations that are discriminatory. Often, housing providers do not realize that rental advertisements that include phrases such as "no kids," "singles or couples preferred," "suitable for professional couple," "quiet building," "working single," "students" and so on are violating the **Code**. Rental ads should indicate that all applicants who can afford the apartment are welcome.

When a discriminatory ad is placed in a newspaper or online, it is not only the housing provider that is liable but also the publisher. Publishers should carefully screen ads to ensure they comply with the **Code**.

**Housing Providers should carefully review all publications to ensure that they do not exclude certain types of applicants.**

# TENANT SCREENING

## Tenancy Applications

Tenancy applications may request information about the applicant's credit history, income and rental history as part of their selection criteria, but not much else. Before asking for additional information such as the sex, gender, age, family status, religion or ethnicity of an applicant, housing providers should keep in mind that having this information could leave them open to an accusation of discrimination if a qualified applicant is then rejected. For example, if the applicant has great housing provider references and good credit but their application is rejected shortly after they disclose that their source of income is **Ontario Disability Support Program (ODSP)**, it is possible that the housing provider could be found to have discriminated based on Receipt of Social Assistance.

**Housing Providers should omit content in applications that could lead to discrimination, such as questions about income source, age of children, religion, and other unnecessary and intrusive queries.**

## Income Criteria and Rent to Income Rules

Housing providers are permitted to request proof of income, which can be provided in the form of bank statements, paystubs or a letter from a government agency. Housing providers should use this information simply to confirm that the applicant can afford the rent. Housing providers should not refuse to rent to applicants who they believe would have to spend too high a percentage of their income on rent. There is no official rent-to-income ratio in Ontario, and it is up to the tenant to decide what percentage of their income they are comfortable spending on rent. It is not the housing provider's prerogative to provide their opinion or make decisions based on what they think the rent-to-income ratio should be.

**Landlords should use income information solely for the purpose of confirming that applicant cannot afford the rent. Use of income information as a means to deny an applicant based on a prohibited ground is contrary to the Code.**

## Credit checks

Housing providers can check an applicant's credit history and can refuse applicants with bad credit ratings. If an applicant has bad credit, housing providers should be willing to explore options, such as enlisting a guarantor that would allow the applicant to rent the unit. Housing providers should also be aware that having bad credit is different from having no credit, which may often be the case for newcomers or young people who are applying for their first rental unit. Applicants who have no credit history should be treated on par with applicants in good standing.

Housing providers should consider extenuating circumstances for **Code** protected groups and be willing to work with applicants to find a mutually beneficial agreement. As previously noted, family breakdown may negatively affect a woman's credit history. It is important to realize that applicants with bad credit ratings as a result of previous circumstances can still be good tenants.

**Housing providers can ask about applicants' credit history but should be aware that having no credit history is not a valid reason to refuse and application.**

## PAST RENTAL HISTORY

Housing providers can ask for references from previous housing provider(s). However, as with credit history, a lack of rental history should not be considered to constitute poor rental history. Youth and newcomers can be particularly impacted by this criterion when they have not have rented in the past.

**Housing Providers should be cognizant that requiring landlord references is not used to exclude protected groups such as youth and newcomers.**

## Guarantors

Housing providers can request guarantors or co-signors, but only if they request this of all applicants. Guarantors are subject to meeting all the same requirements as the applicant (i.e. good credit history) and nothing more. Some housing providers require a minimum income for guarantors, but this is not legal. Although it is often done, it is prohibited under the **Code** to request a guarantor because an applicant is on social assistance, because they are a youth or due to another protected ground.

Housing providers can request a guarantor for a bona fide reason, meaning if the potential tenant cannot meet certain lawful criteria such as positive credit or rental history. In fact, sometimes requesting a guarantor of an applicant who otherwise would not be eligible for the unit due to bad credit or another reason is a way that housing providers can contribute to greater housing accessibility.

**Housing providers should be aware of situations where they are legally permitted to request a guarantor, and should not target certain groups.**

## Last Month's Rent Deposits

Although it is common practice for housing providers to request two months' rent as a deposit with an application, legally, housing providers can only request up to one month's rent payable at the time of signing the tenancy agreement (or lease). It is illegal for housing providers to collect security deposits from tenants, and last month's rent deposits can only be applied to last month's rent. The rent for the first month of a tenancy is due on the first day of the tenancy.

Sometimes housing providers will request several months' rent as a deposit from tenants who do not meet all lawful criteria, but this is prohibited. For example, requesting three months' rent as a deposit from an applicant because they have bad credit is illegal.

Often, housing providers do not realize they are not allowed to request first and last month's rent at the time of application. Some also believe that a last's month rent deposit can be used to pay for damages, but this is not the case. housing providers should also keep in mind that they are required to pay interest accumulated on the deposit to the tenant at the end of the tenancy. More information on deposits can be obtained from the Landlord and Tenant Board.

**Housing providers should only request one month's rent as a deposit, payable upon signing a rental agreement.**

## Direct payment

Housing providers should accept multiple payment methods and should not require tenants to pay in a specific manner. For example, tenants should not be required to arrange for direct payment from social assistance, or to provide post-dated cheques. Housing providers may only request pay direct from social assistance if there is legitimate reason (for example, the tenant has a history of defaulting on rent payments).

**Housing providers should provide a range of options for tenants to pay rent.**

## Police checks

Housing providers may only ask for criminal record check for a bona fide reason. For example, a senior renting a basement apartment may want to verify the tenant in order to protect their safety.

**Housing providers should be cognizant that police record checks can be considered discriminatory if they do not request all applicants to provide one, and should only be requested if it's justifiable.**

## Occupancy Policies

Housing providers can set limits to the number of occupants in the unit only to comply with municipal overcrowding, occupancy or health and safety legislation. Because of the growing disparity between family incomes and housing costs, low-income families frequently need to move into apartments that are smaller than would be ideal. Often large families are refused housing if they do not meet occupancy rules arbitrarily set by housing providers. Furthermore, housing providers should not impose intrusive rules upon applicants, including the common practice of prohibiting children of the opposite sex from sharing bedrooms. Occupancy standards are often higher than many housing providers might think, and should be confirmed with local regulators.

**Housing providers should ensure that occupancy standards for their units are not arbitrary, but rather comply with local regulations.**

## Adult Only Buildings

Designating a building “adult only” or a unit “not suitable for children “ could open a housing provider to a human rights challenge on the grounds of Family Status. “Adult Lifestyle” condominiums contravene human rights legislation. The Code stipulates that housing providers need to be inclusive of families with children. Along with designating a building or unit adults only, housing providers should refrain from designating certain floors for families with children and certain floors for people without children.

**Housing providers have an obligation to be inclusive of families with children.**

## Internal Apartment Transfers

Housing providers should make every effort to accommodate unit transfer requests from tenants because of a change in their family status. Transfers requested as an accommodation for a disability should also be honoured in a timely fashion. Please see the section on “Duty to Accommodate” for more information.

## Reasonable Children's Noise

Housing providers should understand that a certain amount of noise is to be expected from families with children – it is normal for children to play, cry, laugh, yell, run around, and do other “noisy” things. On the other hand, parents should make efforts to minimize children's noise and ensure it is reasonable.

**Housing Providers cannot evict tenants or treat them unfairly due to noise complaints if parents make reasonable efforts to minimize their children's noise.**

## Disability and the Duty to Accommodate

When a tenant requests accommodation for a disability their housing provider has the legal “Duty to Accommodate.” This means that the housing provider is obliged to respond to the request in good faith, and work with the tenant to achieve a satisfactory accommodation. An example of a request for accommodation would be a tenant in a wheelchair asking for a ramp and automatic door to be installed at the main entrance of their residential complex.

## Defining Disability

Disability is defined broadly by the Code and includes conditions physical and mental, visible and not visible. Many people are not aware that addictions are included in the Code's definition of disability. Housing providers are required to make accommodations for addiction issues and cannot retaliate or evict tenants due to an addiction.

## Principles of Accommodation

The Duty to Accommodate is guided by three main principles: respect for dignity, individualization, integration and full participation. These principles underwrite the **Code's** guiding philosophy that all Ontarians should benefit from equal access to opportunities and services.

## Individualized Accommodation

Housing providers are obliged to ensure that accommodations meet the unique needs of the individual requesting them. The Code stipulates that a “one-size-fits-all” attitude to accommodations is not sufficient. For example, installing a ramp does not necessarily mean that a building is accessible to all tenants with physical disabilities. Individuals have unique needs, and the accommodation process should reflect this, promoting the integration and full participation of all tenants. When an accommodation is requested, housing providers and tenants should work together on an individualized action plan that will achieve a sufficient accommodation.

## Cost

It is the housing provider's responsibility to absorb all costs associated with accommodations (i.e. providing ramps, elevators, braille) to the point of “undue hardship.” Tenants and housing providers need to work together to determine and implement appropriate accommodations. There are often outside funds available to assist with these costs (i.e. government grants), and it is the responsibility of both the tenant and housing provider to look into what funds are available.

## Determining Undue hardship

The limit to accommodation set out in the **Code** is “undue hardship.” To reach this limit, a housing provider must show that making an accommodation would be so costly as to affect the survival of their business, change its essential nature or pose a health and safety risk that outweighs the benefit of accommodation. If cost is the issue, they must also show that outside sources of funding are not available to assist with the accommodation. The limit for undue hardship is high, and to date it has not been met in any housing case heard by the Human Rights Tribunal of Ontario.

## QUESTIONS ABOUT HUMAN RIGHTS IN HOUSING

If you have questions regarding your **Code**-related obligations as a housing provider in Ontario, you can contact **CERA** for further information.

### Centre for Equality Rights in Accommodation (CERA)

**CERA** provides information and assistance with housing and human rights issues and eviction prevention services.

Toll Free: **1-800-263-1139**







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