

**Human Rights
and Rental Housing in Ontario**

**SUBMISSIONS TO THE
ONTARIO HUMAN RIGHTS COMMISSION**

Advocacy Centre for Tenants Ontario (ACTO)

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TABLE OF CONTENTS

A.	Introduction	1
B.	Proactive Enforcement of Human Rights Violations.....	2
C.	Protecting and Promoting Social and Economic Rights and Responding to Homelessness	2
	(i) Adding Social Condition as Protected Ground under Ontario's <i>Human Rights Code</i>	2
D.	Homelessness and Economic and Social Rights.....	3
	(i) Addressing Homelessness	3
	(ii) Municipal or provincial laws, policies and practices	7
	(iii) Affordability: Rent Regulation, Social Assistance, and Minimum Wage	9
E.	Applying and Enforcing a Landlord's Duty to Accommodate Disability	12
F.	Tenants Receiving RGI Assistance	13
	(i) Context	14
	(ii) Reporting Requirements.....	14
	(iii) Guest Policies	15
	(iv) Lack of Independent Review	16
G.	Harmonizing Code Sections on Protection from Discrimination Based on Sexual Orientation	18
H.	Record of Offenses	19
I.	Business Practices	21
	(i) Income Criteria, O.Reg 290/98.....	21
	(ii) Social Insurance Numbers (SIN).....	21
J.	Training of LTB adjudicators	21
K.	Raising Public Awareness.....	22
	(i) Local Offices.....	23

(ii)	Advertising	23
(iii)	Outreach	23
(iv)	Other Methods of Education/Outreach	24
(iv)	Outreach through School Boards	24
(v)	Checking back with Community Partners.....	24
L.	About ACTO.....	25

A. INTRODUCTION

ACTO is looking forward to working closely with the Ontario Human Rights Commission (OHRC), the Human Rights Tribunal of Ontario and community partners in the coming months to develop and implement concrete proposals for policy and legislative changes that will strengthen the housing rights of Ontario's residents.

This discussion is possible because of two decades of education and advocacy by the Centre for Equality Rights in Accommodation (CERA).

The OHRC's consultation is an important step in advancing the message that discrimination in the rental market is a significant problem; a critical component of the success of this consultation will be ensuring that individuals know there will be serious consequences if housing rights are violated.

Many Ontarians do not perceive that they have been discriminated against and see their exclusion and/or eviction from housing as the "normal course of events." Upon being told "we don't take children here" or "I don't rent to people on welfare" people move on to the next, and most likely more expensive¹, rental option, increasing the risk of housing instability and possible homelessness. It is for this reason that the OHRC must move aggressively towards proactive education and enforcement of rights that is not case-based.

Highlighting issues of discrimination that people may not immediately recognize, such as seemingly neutral policies that have a discriminatory impact, will better enable people to understand the issues, stand their ground, and assert their rights. The Commission must focus on appropriate remedies and public interest. The public needs to hear about those violations and remedies as the publicity creates a deterrent to individual and corporate landlords.

ACTO has focused on a few key areas rather than trying to answer all of the questions posed in the Commission's background paper with the understanding that other agencies and organizations will comment on their particular areas of expertise.

A summary of the recommendations can be found in *Appendix I*.

1. See Professor Michael Orenstein's comments on page 22.

B. PROACTIVE ENFORCEMENT OF HUMAN RIGHTS VIOLATIONS

The most marginalized and vulnerable residents are also those least likely to know of or assert their rights, and hence also least likely to contact the Commission for assistance. In conjunction with CERA, the OHRC should establish a team of enforcement officers responsible for conducting spot audits of rental buildings.

Discrimination audits in concert with community organizations using paired testing methodology are a widely used practice outside of Canada. The discrimination audits can use a mixture of telephone and in-person spot checks to determine whether a particular landlord or building superintendent is engaging in discriminatory practices, particularly with respect to disability, family status and place of origin. With regard to race-based discrimination, in-person audits would be more effective. There are a variety of ways in which these audits can be carried out, and methodologies can be researched in a number of jurisdictions. Former claimants and equality seeking groups can also be involved in any number of ways from long-term commitments to ad hoc participation in spot checks.

The resulting investigation and enforcement initiatives should also be publicized to deter other landlords and superintendents from engaging in discriminatory practices.

Recommendation #1

That the OHRC set up discrimination audits/enforcement teams in cooperation with the Centre for Equality Rights in Accommodation.

C. PROTECTING AND PROMOTING SOCIAL AND ECONOMIC RIGHTS AND RESPONDING TO HOMELESSNESS

(i) Adding Social Condition as Protected Ground under the Ontario *Human Rights Code*

ACTO believes that including social condition as a protected ground in Ontario's *Human Rights Code (the Code)* would enhance the Commission's role in protecting and promoting social and economic rights and responding to homelessness.

The United Nations Committee on Economic, Social and Cultural Rights at their 36th session in May of 2006 with respect to their concluding observations on economic social and cultural rights in Canada, commented yet again on the lack of protection from discrimination in human rights legislation for Canada's poor:

"The Committee recommends that federal, provincial and territorial legislation be brought in line with the state party's obligations under the Covenant, and that

such legislation should protect poor people in all jurisdictions from discrimination because of their social or economic status."²

Recommendation #2

That the OHRC advocate for legislative changes to amend Ontario's *Human Rights Code* to include social condition as a protected ground.

D. HOMELESSNESS AND ECONOMIC AND SOCIAL RIGHTS

(i) Addressing Homelessness

In the Fifth Periodic Report, Canada reported on a series of post-1999 funding announcements and federal/provincial agreements designed to address homelessness and the shortfall in affordable housing.³ However, despite repeated announcements of projected spending of almost \$1 billion by 2008/2009, the reality is that very few new homes have actually been delivered.

Homelessness continues to be a very visible and pressing problem in Canada. Although it is not possible to accurately count the homeless⁴ estimates range from 100,000 to 250,000 persons.⁵

The health impacts of homelessness are severe and life-threatening. A 2001 study published in the Canadian Medical Association Journal, found "homeless people have a greatly increased risk of death" and "suffer from a wide range of medical problems". For example, compared with the general youth population of Quebec, mortality rates among street youth in Montreal are 9 times higher for males and 31 times higher for females. Among men using shelters for the homeless in Toronto, mortality rates are 8.3 times higher than the mean for 18–24 year olds, 3.7 times higher than the mean for 25–44 year olds and 2.3 times higher than the mean for 45–64 year olds.⁶

A second 2004 study collected data on the homeless population in two Canadian cities, Toronto and Montreal, and compared data from studies in five other non-

2. United Nations Committee on Economic, Social and Cultural Rights, thirty-sixth session, Geneva, 1-19 May 2006.

3. Fifth Periodic Report, Canada, United Nations Human Rights Committee, October 2005.

4. For example, the group of homeless is comprised of the individuals sleeping outside, as well as individuals who sleep in shelters and church basements, in cars and on other people's floors and couches, and people 'at risk' of homelessness. These are referred to as the absolute houseless, the concealed homeless and the at-risk population: David Hulchanski, *A New Canadian Pastime? Counting Homeless People*, (Toronto: CUCS, U. of T. , Dec. 2000).

5. See for example: David Hay, *Housing, Horizontality and Social Policy*, (Ottawa, Canadian Policy Research Networks Inc., March 2005).

6. Stephen Hwang, "Homelessness and Health", *Canadian Medical Association Journal*, January 23, 2001: 164(2), p. 230.

Canadian cities. The risk of death among homeless women in Canada was greater than that among women in the general population by a factor of 4.6 to 31.2 in the younger age group and 1.0 to 2.0 in the older age group.⁷

In the face of this critical problem, what have Canadian governments done to address homelessness? What “positive measures” have been taken in response to recommendations in the Committee’s *Concluding Observations* in 1999?

Canada’s Periodic Report gives projected spending figures under housing programs, particularly the new Affordable Housing Program, launched in 2001, but gives no numbers on new affordable housing units delivered. Ontario is the only province that has released audited reports, revealing that only 63 new units were actually built in Ontario under the new program between January 1, 2001 and March 31, 2004.

Moreover, even if the Affordable Housing Program is fully delivered in Ontario, it will not meet the needs of low-income households because “housing affordability” continues to be defined primarily as rents at or below average rent in a community, as determined annually in the CMHC private rental market survey.

The shortage of new affordable housing has put pressure on the waiting lists for subsidized housing. As reported by the Ontario Non-Profit Housing Association (ONPHA), in Ontario alone, at the beginning of 2007 there were 123,182 low-income households on the active municipal waiting lists for subsidized housing.⁸ In the City of Toronto, where 34% of Ontario’s tenants live, 47,930 households were on the active waiting list.⁹ Applicants in Ontario often wait for three to ten years before they are placed in subsidized housing. Families make up the greatest proportion (39%) of households on the subsidized housing waiting lists.¹⁰

ONPHA notes that "the active waiting list is an incomplete picture of the province's absolute affordable housing needs. This figure does not account for those households who don't maintain their wait list status through the annual confirmations required in most jurisdictions. Many of these households have to be reactivated in later years. **Perhaps, most importantly, the figure does not account for those households who have either given up, without solving their housing problem, or never actually registered because the wait (often**

7. Cheung, Angela M. and Hwang, Stephen W., “Risk of death among homeless women: a cohort study and review of the literature”, *Canadian Medical Association Journal*, April 13, 2004; 170(8), p. 1243.

8. Ontario Non-Profit Housing Association, 2007 Report on Waiting List Statistics for Ontario, August 2007, p. 2.

9. *Ibid*, p.6.

10. *Ibid*, p.6.

five to 10 years in the major centers) is considered too long to bother applying.”¹¹ [original emphasis]

Canada’s national housing agency, Canada Mortgage and Housing Corporation (CMHC) reports that 1.5 million households were in core housing need¹² in 2001¹³, comprising 14% of Canadian households.

One in four renter households (27%) were in core housing need in 2001.¹⁴ The actual number of households in core housing need increased between 1996 and 2001 in six provinces including Ontario.¹⁵

The impact of the shortage of affordable housing is felt disproportionately by vulnerable groups including low-income households.

The 2001 data shows that the incidence of core housing need amongst Aboriginal people living off-reserve (24%) and recent immigrants (36%) is considerable higher than for the general population.

Looking specifically at renter households, the incidence of core housing need amongst lone parents and Aboriginals is very high at 42% and 38% respectively. Seniors are also disproportionately affected: approximately 36% of seniors over 65 or living alone in rental housing are in core housing need.¹⁶

The discriminatory impact of the failure of government initiatives to address homelessness and affordability is also demonstrated by an examination of poverty levels in designated groups. Women, female lone-parent families, people with disabilities¹⁷, Aboriginal people and new immigrants¹⁸ are over-represented in the population living below the poverty line.

11. *Ibid*, p.4

12. Canadian households are considered to be in core housing need if they do not live in and could not access acceptable housing. Acceptable housing refers to housing that is affordable, in adequate condition, and of suitable size.

Adequate dwellings are those reported by their residents as not requiring any major repairs.

Suitable dwellings are not crowded, meaning that they have enough bedrooms for the size and make-up of the resident households, according to National Occupancy Standard (NOS) requirements.

Affordable dwellings cost less than 30% of before-tax household income.

13. 2001 Census Housing Series: Issue 2 – The Geography of Household Growth and Core Housing Need, 1996-2001. Canada Mortgage and Housing Corporation, February 2004.

14. 2001 Census Housing Series: Issue 3 – The Adequacy, Suitability and Affordability of Canadian Housing. Canada Mortgage and Housing Corporation, April 2004.

15. Carter and Polevychok, Housing is Good Social Policy, Canadian Policy Research Networks Inc., Dec. 2004, p.10.

16. *Ibid*, p.10.

17. 27.9% of working-age adults with disabilities lived below the Low -Income Cut-Offs, as compared to 12.7% in the non-disabled population: Human Resources Development Canada, Disability in Canada: A 2001 Profile, (Ottawa: Human Resources Development, 2003) at p. 34

For example, the 2001 Canadian census revealed that some 31% of Aboriginal households were classified as low-income, compared to only 12% of non-Aboriginal households.¹⁹ Aboriginal persons are over-represented in Canada's homeless population by a factor of 10.²⁰

Women are also disproportionately affected by the lack of adequate, affordable housing. In 2002, 51.6% of single mothers, 41.5% of unattached women over 65 years of age and 35% of unattached women under 65 years of age were living below the poverty line.²¹ The situation of single mothers has also deteriorated: the percentage who are poor rose to 52% in 2003 from 44.5% in 2001.²²

The failure of Canadian governments to introduce a comprehensive and effective national strategy to address homelessness and the affordable housing crisis is particularly discouraging when considered in light of the very healthy financial surpluses enjoyed by the federal government in recent years. The federal government has been sitting on consecutive years of surplus budgets, while not spending adequately on social programs that could significantly reduce poverty and inequalities in Canada.²³

The reality is that the federal government can well afford to make an ongoing serious commitment to rebuild social programs and affordable housing programs to address homelessness with a comprehensive national strategy.²⁴

18. Low-income rates for new immigrants rose from 25% to 36% between 1980 and 2000, while low-income rates for native-born Canadians fell from 17% to 14.9% during the same period: Garnett Picot and John Myles, *Poverty and Inclusion: Income Inequality and Low Income in Canada* Policy Research Initiative 7:2 (Dec. 2004), online: Policy Research Initiative,

<http://policyresearch.gc.ca/page.asp?pagenm=v7n2_art_03>

19. Statistics Canada, *Census 2001, Topic-based Tabulations, Aboriginal Peoples of Canada*, Cat.No. 97F0011XCB2001047

(available online: <http://www12.statcan.ca/English/census01/home/Index.cfm>).

20. Individuals of Aboriginal origin account for 35% of the homeless population in Edmonton, 18% in Calgary, 11% in Vancouver and 5% in Toronto, but only 3.8%, 1.9%, 1.7% and 0.4% of the general population of these cities respectively: Stephen Hwang, "Homelessness and Health" (2001) 164(2) *CMAJ* (online: e;*CMAJ* <<http://www.cmaj.ca/cgi/content/full/164/2/229>>

21. Canadian Feminist Alliance for International Action, "A Decade Of Going Backwards, Canada in the Post-Beijing Era, Response to UN Questionnaire on Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly" (2000), http://www.fafia-fai.org/docs/B10_shadow_10CCE6.doc (date accessed: 12 October 2005).

22. <http://www40.statcan.ca/l01/cst01/famil41a.htm>

23. *Alternative Federal Budget 2005: Budget in Brief*. Canadian Centre for Policy Alternatives, February 17, 2005.

24. Russell, Ellen. *Debunking the U-shaped Budget Surplus*. Canadian Centre for Policy Alternatives' *Behind the Numbers: economic facts, figures and analysis*, Volume 7, Number 1, February 22, 2005.

Recommendation #3

That the OHRC lobby both the federal and provincial governments to cooperate to:

- **develop a comprehensive national strategy to address homelessness and the affordable housing crisis;**
- **revise affordable housing supply programs to reflect real poverty levels of households in need.**

(ii) Municipal or provincial laws, policies and practices

Discriminatory zoning

ACTO agrees with the submissions and recommendations of HomeComing on issues related to discriminatory municipal or provincial zoning, policies, practices and by-laws.

As the commission is aware, ACTO is working with the Dream Team²⁵ and a coalition of organizations on the issue of the impact of restrictive provisions in municipal policies and zoning bylaws on people living with mental health challenges.

The psychiatric survivors who make up the Dream Team are well aware of the barriers to developing supportive housing for people with mental health challenges. They have sat through Ontario Municipal Board (OMB) hearings and other public venues where local residents have demonized potential future residents of the site solely because they have had interaction with the mental health system. They have also seen how municipal planning policies and practices and zoning bylaws permit these discriminatory attitudes to gain traction.

ACTO has engaged the services of GHK International (Canada) Ltd. (GHK) to conduct a survey of the zoning bylaws and policies in municipalities across the province that would have a discriminatory impact on persons offered protection under the Code. It should be noted that GHK's final report will not be finalized until after OHRC deadline for submissions. However, it is hoped the OHRC will accept this planning report after that deadline as it would inform significantly the OHRC's analysis of the impact of discriminatory zoning bylaws on people's access to housing.

GHK's study found one municipality with the following policy as part of their official plan adopted in August 2005:

25. The Dream Team is a group of psychiatric survivors and family members who demonstrate the life-altering benefits of supportive housing by telling their stories to politicians, community groups, schools, faith groups and other institutions to advocate for more supportive housing available in Ontario for people living with mental illness. The Dream Team advocates on behalf of more than 30 organizations that serve over 6000 people with mental health and addiction problems.

4.7.2.4 Notwithstanding the generality of subsection 4.7.2.2, group homes for the **mentally handicapped shall be restricted to a total of 36 residents** [emphasis added]. Once this number has been reached, no further such group homes shall be permitted until the council has completed an assessment of the impacts of such homes on the town, particularly on the provision of municipal services, and has amended its plan to permit further such group homes to be located within the town.

GHK's preliminary research has revealed that:

- all municipalities examined had distancing requirements although they varied in distance and how they should be calculated
- some municipalities excluded group homes from residential zones
- larger care facilities were often limited to very few zones
- there were cases of other discriminatory policies such as a cap on group home residents and requirements for public meetings
- group home providers also face a variety of discrimination in practice, although not officially shaped by policy or bylaws

A significant finding of the preliminary research by GHK is that "If the development is not as-of right and it seems that they will not be given the variances they require to go ahead with the project, the group has recourse to the Ontario Municipal Board. However any chance of a protracted and costly legal battle can quickly render the project financially infeasible."

Recommendation #4

Adopt recommendations set out in HomeComing's submissions, including:

- **affirm that Not-in-My-Backyard (NIMBY) discrimination is a human rights violation**
- **work with the Ministry of Municipal Affairs and Housing to identify and prohibit discriminatory municipal practices**
- **work with the Ministry of Municipal Affairs and Housing to make affordable housing supply a human rights imperative**

Recommendation #5

That the OHRC accept the final report of GHK International to form part of the research into discrimination in the rental housing market before issuing the policy paper.

Recommendation #6

That, as part of an ongoing and long-term commitment, the OHRC conduct an audit of all provincial and municipal bylaws and policies through the human rights lens.

(iii) Affordability: Rent Regulation, Social Assistance and Minimum Wage

Rent Regulation

Vacancy decontrol (which allows a landlord to increase the rent in a vacant apartment to any amount of money) has led to a rapid decrease in the number of affordable housing units in Ontario.

The City of Toronto, for instance, has lost most of its stock of affordable private rental apartments since rent controls on vacant units were lifted. Between 1997 and 2003, the number of one-bedroom units with rents below \$700 per month shrank by 85%, and the number of two-bedroom units with rents below \$800 per month shrank by 89%.²⁶

According to the April 2007 CMHC rental market survey, vacancy rates decreased in 4 of the 11 Ontario Census Metropolitan Areas (CMAs), increased in 6 of the 11 CMAs and remained unchanged in one (Hamilton). The overall vacancy rate in Ontario increased to 3.9% in April 2007 from 3.4% in October 2006.

The same survey revealed that, two-bedroom rents increased in 8 of the 11 Ontario CMAs, except for Kingston (rent decreased by \$2, from \$841 to \$839), Thunder Bay (rent decreased by \$3, from \$696 to \$693), and Windsor (rent decreased by \$5, from \$774 to \$768).

ONPHA's waiting list survey also revealed that "among the 34 service manager areas which reported applicant income ranges, the average percentage of households with a gross income below \$20,000 per year is 76%. 11 of the service manager areas reported that 90% or more of their waiting list applicants earned less than \$20,000 per year."²⁷

The United Nations' special rapporteur on housing, Miloon Kothari, commented in 2007 with respect to the implementation of state obligations, "States should review the operation and regulation of the housing and tenancy markets and,

26. Rental Housing in Toronto: Facts & Figures, March 2006. Shelter, Support & Housing Administration, City of Toronto, at p. 7.

27. Ontario Non-Profit Housing Association, 2007 Report on Waiting List Statistics for Ontario, August 2007, p. 8.

when necessary, intervene to ensure that market forces do not increase the vulnerability of low income and other marginalized groups to forced eviction."²⁸

Recommendation #7

That the OHRC advocate at the provincial level, including with the Ministry of Municipal Affairs and Housing, for regulation of rent increases on all rental units, vacant and occupied.

Social Assistance Rates

The cut to *Ontario Works* or welfare (OW) levels is felt most keenly by households that do not live in subsidized housing; fully 80% of beneficiaries rent housing in the private rental market²⁹. These households must use a significant portion of their food money to pay rent and frequently make use of food banks to feed their families. A study of food bank clients in Toronto demonstrated that the majority of food bank clients are on some form of social assistance and renting private market housing.³⁰ The study found that 38% of children whose families use food banks are living in over-crowded and unhealthy housing.³¹

In February 2003, a number of social assistance recipients in Ontario (assisted by ACTO and CERA) filed human rights complaints alleging that the shortfall in the shelter allowance prevented them accessing adequate housing for themselves and their children. The claimants, most of whom were young single mothers, filed written statements documenting the difficulty of finding adequate and affordable housing and their need to use the food portion of their social assistance to cover their shelter costs in the private rental market. The claimants had applied for subsidized housing, but given waiting lists at the time³², could not expect to be offered a subsidized unit for several years.

28. United Nations Human Rights Council, fourth session, Implementation of General Assembly Resolution 60/251 of 15 March 2006, entitled "Human Rights Council": Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, 5 February 2007.

29. Statistics and Analysis Unit, Social Assistance and Employment Opportunities Division, Ministry of Community and Social Services – June 2005 quarterly report of OW/ODSP cases and beneficiaries by accommodation types.

30. Daily Bread Food Bank, Research and Education, Somewhere to Live or Something to Eat, (Toronto: August 2004), pp. 6 and 13.

31. *Ibid*, p.6

32. There are 124,785 households on the active waiting lists for subsidized housing in Ontario: Ontario Non-Profit Housing Association, 2005 Assessment of Waiting List Statistics For All Service Manager Areas in Ontario, July 2005, p. 4.

The OHRC dismissed the complaints on March 17, 2004,³³ thereby denying the claimants any access to adjudication or to a remedy before the Human Rights Tribunal of Ontario.

The United Nations Committee on Economic, Social and Cultural Rights in their 36th session in May of 2006 with respect to their concluding observations about Canada commented,

62. The committee reiterates its recommendation that the federal, provincial and territorial governments address homelessness and inadequate housing as a national emergency by reinstating or increasing, where necessary, social housing programs for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, **increasing shelter allowances and social assistance rates to realistic levels**, [emphasis added] and providing adequate support services for persons with disabilities.³⁴

Recommendation #8

That the OHRC advocate with the provincial government to raise the amount of Ontario Works (OW) and Ontario Disability Support Plan (ODSP) payments to a realistic level, including a realistic level of the shelter allowance, to reflect the real costs of housing, food and other basic necessities.

Minimum Wage

The United Nations Committee on Economic, Social and Cultural Rights in their 36th session in May of 2006 with respect to their concluding observations about Canada commented, "The committee urges the State party to adopt all necessary measures to ensure that minimum wages are increased throughout Canada to a level enabling workers and their families to enjoy a decent standard of living."³⁵

Recommendation #9

That the OHRC advocate with the provincial government to raise the minimum wage.

33. Unreported, Ontario Human Rights Commission, File No. JWIS-5JUR3L, 17 March 2004.

34. United Nations Committee on Economic, Social and Cultural Rights, thirty-sixth session, Geneva, 1-19 May 2006.

35. *Ibid*, recommendation number 47.

E. APPLYING AND ENFORCING A LANDLORD'S DUTY TO ACCOMMODATE DISABILITY

ACTO applauds the recognition given in the background paper on *Human Rights and Rental Housing in Ontario* to the discrimination faced by persons with mental health challenges in accessing adequate housing in Ontario. People with mental health histories face discrimination not only in accessing adequate housing, but also in maintaining their housing.

The OHRC has a solid reputation with respect to dealing with human rights complaints related to physical access and accommodation of physical disabilities.

People with mental disabilities are often stigmatized and met with public attitudes of prejudices and judgemental thinking. Increasing public awareness and understanding of mental health challenges would assist in dismantling the negative perceptions associated with people facing these challenges.

During the in-person public consultations in Toronto, social housing landlords expressed concerns relating to their duty to accommodate people with mental disabilities. While there may be funding implications in meeting one's duty to accommodate, just as the OHRC would require a landlord to install a ramp where a tenant has mobility disabilities, so too should a landlord be required to accommodate a tenant with mental health disabilities.

The legislation has the safeguards that social housing landlords are looking for: accommodation must be provided to the point of undue hardship. Landlords, including social housing landlords, should be required to meet the undue hardship threshold before their duty to accommodate is diminished. Often proactive mediation or education is all that is necessary to address the situation, but landlords too often and too quickly chose the route of termination of tenancy, often heightening the crisis.

Landlords have the same duty to accommodate disability as employers do. The OHRC's *Disability and Duty to Accommodate (2000)* Policy and Guideline, while created with the duty to accommodate disability in the work context, is applicable in the housing context. Landlords have no less duty to accommodate than employers do. It is necessary to ensure that the principles of dignity and inclusion are extended to people with mental illnesses in their housing. We expect that guideline to be expanded to address accommodation in the housing context.

The legislature has already turned its mind to the relationship between residential tenancy legislation and human rights legislation. The current residential tenancy legislation in Ontario is the *Residential Tenancies Act*, S.O. 2006, c. 17 (the RTA). It provides, at s.3(4) that in the event of conflict between a provision in the RTA and the Code, the Code prevails. Both the *Landlord and Tenant Board* (the LTB) and the *Divisional Court* have held that landlords must accommodate a tenant up to the point of undue hardship. The predecessor to the LTB, which was

called the Ontario Rental Housing Tribunal (ORHT), has also held similarly on many occasions.

The OHRC must apply the same high standard of the duty to accommodate people with psychiatric disabilities as that which exist for all other disabilities.

It is important to recognize that the need for adequate funding does not in any way release housing providers and funders from the responsibility to provide appropriate housing. With respect to the right to adequate housing, the Committee for Economic, Social and Cultural Rights of the United Nations commented in 1997: "that provision recognizes, *inter alia*, the right to be protected against 'arbitrary or unlawful interference' with one's home. It is to be noted that the state's obligation to ensure respect for that right is not qualified by considerations relating to its available resources."³⁶

Recommendation #10

That the Commission ensure the Policy and Guidelines on Disability and the Duty to Accommodate is entrenched in the policy paper on discrimination on rental housing.

Recommendation #11

While these guidelines are being refined and entrenched in the housing rights context, the OHRC should communicate via all 47 Service Managers and the Ontario Non-Profit Housing Association (ONPHA) to social housing landlords, as well as through the Co-operative Housing Federation (Ontario Region) and landlord associations such as the Federation of Rental Housing Providers of Ontario (FRPO) that the duty to accommodate will be vigorously applied by the OHRC.

Recommendation #12

That the OHRC advocate for increased and substantial supportive housing dollars with the Ministry of Municipal Affairs and Housing (MMAH), the Ministry of Community and Social Services (MCSS) and the Ministry of Health and Long-Term Care (MHLTC).

F. TENANTS RECEIVING RGI ASSISTANCE

ACTO regularly hears concerns and complaints from tenants in receipt of housing assistance and their advocates across the province with respect to how tenants are treated by property managers. These complaints arise whether the

36. United Nations Committee on Economic, Social and Cultural Rights, sixteenth session, Geneva, May 20, 1997, The right to adequate housing (Art 11.1): forced evictions: CECSR General comment 7, p. 2.

tenants are in social housing, small non-profits, co-operative housing or in private market rent supplement units.

There exists what can only be described as a *culture of contempt* towards subsidized tenants, a culture that results in them being treated as less worthy, less important, less responsible and less honest than others in society, simply because they are poor and in need of a housing subsidy.

A draconian and complex regulatory system respecting eligibility lack of understanding, coupled with a lack of education around poverty issues on the part of social housing staff, makes life as a tenant in receipt of a rent subsidy an unpleasant minefield of uncertainty and discrimination.

Forms and processes particularly disadvantage people whose first language is not English.

(i) Context

The administration of subsidized housing was downloaded from the province of Ontario to the municipalities in 2001, with the introduction of the *Social Housing Reform Act (SHRA)* and its regulations, which set out the rules regarding administration of social housing, including the administration of rent subsidies.

The rules in the *SHRA* are very complex; in the words of one Superior Court judge, "[t]he scheme of the Act and regulations is Byzantine. The witnesses at trial – and indeed, counsel at trial – could not explain their intricacies."

In addition to being "Byzantine", the rules are also quite harsh. Tenants who do not promptly give their landlords information about changes in their lives, or are late in filling out forms, face loss of their subsidies and a resulting dramatic increase in rent. As many staff of many housing providers are not adequately trained, it is no great surprise that the rules are applied inconsistently across the province, when reviewing eligibility for rent geared to income (RGI) assistance.

Every tenant in receipt of a housing subsidy is effectively a tenant in receipt of social assistance and thereby enjoys the protections of the Code in their accommodation.

(ii) Reporting Requirements

The *SHRA* and its regulations provide very short time frames for tenants to report changes in their circumstances.

Under s. 10 of the regulations, for example, a tenant has only 10 calendar days to advise the housing provider of a change in income or a change of household composition. Failure to meet this deadline means the household can lose its subsidy and the rent due will increase to the 'market' rent.

The regulations do allow a service manager to extend the time, and several municipalities have changed the reporting deadline to one month (Ottawa allows 31 days, for example, and Toronto 30). Other municipalities, such as the Region of Peel, have chosen not to give tenants more than the 10 days set out in the regulations.

For working tenants, subsidized rents are set at 30% of their income. A tenant whose Adjusted Gross Monthly Income (AMI) earned \$1,000 per month would pay \$300 for a unit, where the 'market' rent may be \$900. If the tenant's monthly income increased by \$60, the rent would change to \$318. If, however, the subsidy was cancelled altogether because the tenant didn't advise the landlord of the change in income within the short timeframes, the landlord could cancel the subsidy and increase the rent to \$900, or 90% of the tenant's income.

The end result, in most cases, would be economic eviction. The tenant who does not pay the full \$900 would be faced with an eviction application at the LTB, which would end with the tenant losing his/her home, with the added burden of an order for payment of the full amount of rent. If several months had passed, this could be a debt of thousands of dollars for what was essentially a minor oversight.

To be clear, this is not a question of tenants misrepresenting their income (which is a separate issue for which a tenant would, if proven guilty, clearly be liable to lose his/her housing). The penalty for not reporting a change in one's household does not fit the offence. If a similar disproportionate penalty existed for the population at large, for example, for late filing of an income tax return, there would be public outrage.

There have also been cases where housing providers use the onerous reporting requirements to 'teach them a lesson' in responsibility, by cancelling their subsidies and threatening them with eviction, or even going so far as to obtain an eviction order before graciously allowing the tenant to stay.

There exists a broad discretion to extend time or to allow a tenant to continue to receive a subsidy in exceptional circumstances; many service managers do not use the discretion.

(iii) Guest Policies

The application of guest policies provides a glimpse into the extraordinarily intrusive nature of many subsidy regulations.

Part V of O. Reg. 339/01 of the *SHRA* governs leases and occupancy agreements for tenants in subsidized housing. Section 21(3) states that,

A housing provider shall establish rules for the temporary accommodation of guests in its rent-gearred-to-income units and shall provide a copy of the rules in either written or

electronic format to the service manager and to the households residing in those units.

Some housing providers have used this requirement to establish rules governing the temporary accommodation of guests to overly police and monitor the lifestyles of their tenants. Sometimes, if a tenant fails to receive permission to have an overnight guest his/her subsidy is revoked. It is within the sole discretion of the housing provider whether or not to permit a tenant to have a guest. There have been cases of tenants wanting family visitors over a holiday and being told that was contrary to their lease. In some jurisdictions, upon the discovery of an overnight guest, the guest is declared an illegal occupant and the tenant's subsidy is revoked.

One tenancy agreement from the District Municipality of Muskoka is an example of an overly zealous service manager monitoring tenants' lives. Part of the policy reads:

5.04 In the event that persons other than those listed in section 5.01(a) as Tenant(s) or Occupants are occupying the unit, they shall be deemed to be illegal occupants and the Tenant(s) shall no longer qualify for rent-geared-to-income or occupancy of the unit.

5.05 Any person found to be occupying the unit other than the Tenant(s) and those listed ... as an Occupant will be considered to be a trespasser. In the event that a trespasser is found by Muskoka to be occupying the unit this Agreement may be terminated by Muskoka, effective on the date upon which such a trespasser is found to be occupying the unit. In such case the Tenant(s) shall move out of the unit immediately.

This housing provider interpreted the rule to mean that a tenant should have written permission for guests, and would not clarify the length of stay that would warrant this requirement.

Only tenants who are in receipt of public assistance in the form of a housing subsidy must receive *prior written approval* from their landlord before welcoming overnight guests. While administrators of assistance have every right to ensure appropriate information and documentation to ensure ongoing RGI subsidy eligibility, these inquiries and rules must be reasonable.

(iv) Lack of Independent Review

Currently there is no independent review of a decision of a housing provider or service manager to revoke a tenant's housing subsidy. Insecurity faced by tenants with respect to maintaining their subsidy and the lack of any effective

means to challenge a decision places tenants even more at the whim of housing staff.

On January 31, 2007, the *RTA* was proclaimed. The *RTA* governs relationships between landlord and tenants, and only by application to the Landlord and Tenant Board (LTB) can a tenancy be terminated. One ground for termination that a landlord can bring against a tenant is an application to terminate a tenancy for arrears of rent.

The *RTA*, in a new provision under s. 203, has expressly denied the LTB jurisdiction to make determinations or review decisions concerning the eligibility for, or the amount of rent geared to income rent payable under the *SHRA*.

In practice, once a decision has been made to revoke a housing subsidy, a tenant will most certainly end up facing an arrears application at the LTB to have the tenancy terminated. A tenant who may have wanted to argue that his/her housing subsidy was revoked unfairly or unlawfully is now be barred from making that argument. Where a private landlord applies for eviction and arrears of rent, an LTB member must independently determine whether there are arrears of the "lawful rent" before ordering a termination of the tenancy and eviction. However, the LTB is now prohibited from doing so for tenants in social housing. This means there is no adjudication of the issue of lawful rent for social housing tenants, and the LTB must blindly accept whatever the social housing staff says the rent should be.

Neither does the *SHRA* provide any relief for tenants. The *SHRA*'s internal review process requires only that the internal review not be conducted "by the same person" who made the original decision. In practice, this means decisions will be made by a colleague of that person. There is no right to an oral hearing and no right to reasons explaining the decision to uphold the original decision. Decisions on internal reviews under the *SHRA* rarely, if ever, overturn a decision, and rarely even bother to explain why the decision was made in the first place.

In addition to public sector and private non-profit landlords, there are increasing numbers of private landlords with rent supplement units. Anecdotal evidence of discrimination against tenants receiving rent assistance includes a landlord who tried to bar subsidized tenants from the pool area, while market rent tenants in the same building had full access. Another landlord wanted to charge the subsidized tenants for use of the gym that the market rent tenants were able to use for free.

In short, tenants who receive social assistance in the form of a rent subsidy are subject to an unparalleled and ongoing scrutiny of their lives, and have the spectre of losing, for relatively minor reasons, their housing.

Recommendation #13

That the OHRC produce a policy document that specifically addresses the treatment of tenants receiving rental assistance. The parameters of this inquiry/policy statement should be set up with the assistance of social housing tenants and their advocates.

Recommendation #14

That the OHRC write to the Minister of Municipal Affairs and Housing advocating for the need for a truly independent review of decisions made by housing providers under SHRA.

Recommendation #15

That the OHRC advocate for legislative changes to revoke s. 203 of the RTA, thereby allowing tenants in receipt of rent subsidy the same access to justice afforded market rent tenants.

G. HARMONIZING CODE SECTIONS ON PROTECTION FROM DISCRIMINATION BASED ON SEXUAL ORIENTATION

Currently, the code contains protections from discrimination based on sexual orientation in section 2 (1) with respect to accommodation, yet protection from harassment is not contained in section 2 (2).³⁷

Recommendation #16

That the OHRC advocate for legislative changes to amend Ontario's *Human Rights Code* to add sexual orientation as a prohibited ground in section 2(2) of the Code.

37. Accommodation

2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (1); 1999, c. 6, s. 28 (2); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (2).

Harassment in accommodation

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (2); 1999, c. 6, s. 28 (3); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (3).

H. RECORD OF OFFENSES

The connection between homelessness and incarceration has been recently analyzed in a study undertaken by the John Howard Society of Toronto and the Centre for Urban and Community Studies at the University of Toronto³⁸. Research showed that nearly 1000 admissions to the shelter system were from persons who had come directly from the criminal justice system, having been released directly from jail or court with no fixed address.

Numerous other reports have shown that stable housing is a major factor in reducing the likelihood of re-offending and generally in enhancing community safety.

30% of people within the provincial jail system in Ontario face mental health problems while another 40-50% struggle with addiction problems. In addition, the numbers of persons with HIV/AIDS and Hepatitis C continue to increase dramatically within the Canadian criminal justice system, mostly as a result of harm reduction measures being unavailable within the correctional system.

Across Canada, and specifically within Ontario, over 60% of persons in provincial jails are on remand only, meaning that they have been charged but not convicted of any crime. Some of them spend months in custody, awaiting trial. Often, when they are able to have their day in court, the judge withdraws the charges or determines that because of the amount of time that they already spent in custody (and because of the overcrowded, dirty and unsafe conditions inside the detention centres and jails); they have already served their time for the crime. In other cases, they are given sentences to serve.

People are often released directly from jail or court in their prison-issue orange jumpsuits with no transportation allowance, no identification and no money. For security reasons, their belongings cannot be transported on the vans that take them to jail, and recently released prisoners must find their own way back to the facilities to get them. Showing up to a meeting with a landlord for the first time in these circumstances, is obviously not advisable. Therefore, they have no choice but to stay on the street, in the shelter system, with a friend or family member (when possible, though often these are not options) when they are first released. Some people in these situations crack under pressure, anxiety and fear and end up going back to jail almost as quickly as they were released.

Planning that can be done to assist a person upon their release (known as discharge planning) is rarely available in situations where persons have not already been sentenced, and therefore, have a definitive release date. While many people on remand are homeless at the time of their arrest, others will lose

38. Justice and Injustice: Homelessness, Crime, Victimization, and the Criminal Justice System, Centre for Urban and Community Studies, University of Toronto and the John Howard Society of Toronto, November 2006.

their housing while in custody, owing to their inability to continue to work or receive benefits which would allow for them to continue paying rent.

For the most part, discharge planners employed by the Ministry of Corrections and staff and volunteers who work for various community agencies are unable to make specific plans with their clients in jail because there is so much uncertainty about when someone will be released from jail. Setting up appointments for social assistance, or to view an apartment becomes quite impossible.

People who have been in conflict with the law often face multiple barriers associated with stigma, discrimination and poverty which make access to housing exceedingly difficult. Because there is so much fear and negativity connected to this group based on misconceptions often portrayed by popular media and a general lack of education about the realities of the criminal justice system and homelessness in Canada, it is imperative that marginalized persons who are in need of housing are protected by the Code.

With stable housing in place, and a recovery and reintegration plan that is based on increasing the quality of life and social inclusion, prisoners leaving incarceration will feel more connected to their communities. In addition to the positive life changes that come from having safe shelter, the other obvious benefits of having stable housing often mean that persons will be less likely to go back to the people, places or things that led to their conflict with the law in the first place.

The right to housing cannot be set aside based on an idea that the person may commit an offense in the future because they have offended in the past. There are mechanisms available to a landlord through the LTB, should the tenant fail to pay rent or engage in illegal activity. In fact, the RTA has an expedited process for landlords should the tenant be accused of an illegal act.

Recommendation #17

That the OHRC advocate at the provincial level, specifically with the Ministry of Community Safety and Correctional Services to provide a Housing Benefit to enable short-stay prisoners to retain their housing.

Recommendation #18

That the OHRC request legislative changes to amend the Code to add Record of Offenses as prohibited ground of discrimination under s.2 of the Code.

I. BUSINESS PRACTICES

(i) Income Criteria *O.Reg 290/98*

The basic question to which a landlord should apply her/himself is "can this tenant pay the rent?"

If a credit check reveals that the tenant has not paid their phone bill, this is not relevant to the tenant's ability to pay rent. There is a mechanism through which the landlord can act if the tenant fails to pay the rent, by applying to the LTB for an order allowing for eviction in the event that the alleged arrears are not paid.

As Professor Michael Orenstein, Director of the Institute of Social Research at York University wrote, "From this extensive analysis of the Census and other surveys, there is clear evidence that income criteria differentially affect most of the groups currently protected under Ontario's *Human Rights Code*, defined on the basis of sex, marital and family status, age, citizenship, race, immigration status, place of origin and being in receipt of social assistance. The result is to significantly restrict the housing choice of members of these groups and to either drive them to live in higher priced accommodation or into homelessness. Neither result, in my submission, can be acceptable to a responsible government."³⁹

Recommendation #19

That the OHRC request legislative changes to Ontario Regulation 290/98 to make it explicit that income criteria may not be used to deny housing.

(ii) Social Insurance Numbers (SIN)

Immigration status is not relevant to the search for housing. Because refugees have an identifying number on their SIN card, landlords should stop asking for these numbers.

Recommendation #20

That the OHRC issue a policy directive that landlords should not be requesting SIN numbers.

J. TRAINING OF LTB ADJUDICATORS

The OHRC has recently expanded its outreach to agencies, boards commissions, and tribunals to offer training in the area of human rights; a vital component of ensuring that decisions from these bodies are consistent with the Code.

39. Michael Orenstein, Submissions to the Standing Committee on General Government with respect to Bill 96 [*Tenant Protection Act*], June 1997.

Currently the LTB does not concern itself with what would happen to a person after an eviction order is issued. As the OHRC is well aware, evictions have a disproportionate impact on those persons protected by the Code.

In General Comment No. 7 provided by the United Nations Committee for Economic Social and Cultural Rights on May 20, 1997, the Committee commented "evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the state party must take all appropriate measures to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."⁴⁰

Recommendation #21

With respect to the training of LTB adjudicators, the OHRC's emphasis should be on ensuring that adjudicators fully understand the meaning of the duty to accommodate and that any consideration of eviction be considered in light of Canada's commitments under the International Covenant on Economic, Social and Cultural Rights.

In addition, the LTB does not have a specific protocol with respect to tenants appearing before the Board that may have competency issues. Tenants with mental health issues often find themselves unrepresented before the LTB, and adjudicators are ill prepared about how to proceed.

Recommendation #22

That the OHRC work with the LTB, the Psychiatric Patient Advocacy Office (PPAO) and other key stakeholders to develop a protocol, guidelines and training for adjudicators with respect to working with tenants presenting competency challenges appearing at the LTB.

K. RAISING PUBLIC AWARENESS

The OHRC can increase its profile locally and provincially through a variety of mechanisms set out below, including opening regional offices, mainstream and community media; targeted advertising, increased use of government, corporate and community networks.

The OHRC will have heard of the frequency of newcomers to Canada being targeted by unscrupulous landlords and in ways such as asking for six months rent up front.

40. United Nations Committee on Economic, Social and Cultural Rights, sixteenth session, Geneva, May 20, 1997, The Right to Adequate Housing (Art 11.1): Forced Evictions: CECSR General comment 7, recommendation 16.

Recommendation #23

That the OHRC place particular emphasis on providing information to networks and organizations and community media serving new immigrants in a variety of languages.

(iii) Local offices

Community legal clinics in Northern Ontario met recently to discuss the current consultation and particular reference was made to previous local presence from the Commission. In the past, OHRC staff would initiate and attend local community meetings, both in reaction to community events as well as proactive community engagement.

Recommendation #24

The OHRC should return to having a local presence in communities throughout Ontario.

(iv) Advertising

The OHRC is encouraged to advertise widely the housing rights of people in Ontario.

Recommendation #25

That the OHRC aggressively pursue advertising and Public Service Announcements (PSAs) in the mainstream media (newspapers, radio, TV) and community newspapers in different languages, public transportation shelters, and in ethno-specific papers in different languages.

(v) Outreach

Expanding use of provincial and municipal government and community agencies that have regular contact with the public, such as Government Information Centres, the LTB, municipal parks and recreation centres, public libraries, provincial and municipal networks and associations such as the Ontario Association of Food Banks, Housing Help Association of Ontario, etc. to provide regular information on rights, violations, and remedies.

The OHRC can communicate with existing networks such as: the Federation of Canadian Municipalities, Association of Municipalities of Ontario, the Co-operative Housing Federation (Ontario region), regional groupings such as Co-operative Housing Federation of Toronto, the Ontario Non-Profit Housing Association (ONPHA), the Federation of Rental Housing Providers of Ontario (FRPO), Greater Toronto Apartment Association (GTAA), Association of Eastern Ontario landlords, etc.

Recommendation #26

That the OHRC and Tribunal use their communications networks to the fullest to ensure that decisions about landlords who have discriminated are given the widest possible mainstream and community media circulation, as well as circulated throughout a variety of networks.

Recommendation #27

OHRC staff should work with these sector organizations with a view to attending their regional meetings to give workshops on human rights issues.

(vi) Other Methods of Education/Outreach:

- Distributing posters and pamphlets in community centres, etc.
- Providing key messages for inserts in utility bills, social assistance cheques, MPP and city councillors' newsletters, union newsletters,

(vii) Outreach Through School Boards

Housing as a right and discrimination in the housing context is currently not widely understood, nor often in the public eye.

Recommendation #28

That the OHRC work with elementary and secondary school boards to place human rights squarely onto the curriculum of elementary and public schools.

(viii) Checking back with community partners

Regular consultation with community partners will provide an opportunity for the OHRC to monitor its effectiveness.

Recommendation #29

That the OHRC consult regularly with community partners to monitor effectiveness of human rights education and messages throughout communities in Ontario.

L. ABOUT ACTO

ACTO is a province-wide community legal clinic funded by Legal Aid Ontario that works to improve the housing situation of Ontario residents who have low incomes including tenants, co-op members and people who are homeless. ACTO also does human rights advocacy on housing issues in a variety of legal, political and policy forums, including advocacy before the OHRC.

ACTO's mandate is to undertake legal and law reform advocacy with the goal of broadening the legal rights of low-income persons in respect of their need for adequate and affordable housing.

ACTO's work has included litigation and law reform advocacy aimed at achieving legal and policy reform in the following areas:

- Ending evictions without a hearing and without consideration of risk of homelessness;
- Increasing the provincial social assistance shelter allowances to reflect actual average rents faced by vulnerable households in their communities;
- Giving human rights claimants a right of access to a human rights tribunal; and
- Addressing homelessness through a comprehensive national strategy.

ACTO also operates a Tenant Duty Counsel Program in communities across Ontario, offering legal advice and representation to low-income tenants facing eviction at the LTB. ACTO serves approximately 15,000 tenants facing eviction from their housing each year.

ACTO staff would be pleased to discuss these recommendations and future strategies with the OHRC.

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