Advocacy Centre for Tenant Ontario (ACTO)
Submission to Justice Policy Committee hearings on Bill 140,
Stronger Communities through Affordable Housing Act, 2010

Make real changes to improve the system for low-income people

ACTO and our community partners have been working on Ontario's long-term affordable housing strategy for over three years. Three housing Ministers have taken charge of the development of the strategy and we have lost count of the number of meetings that were called to discuss the strategy. The message from all those meetings was clear. You cannot have a long-term affordable housing strategy without making a commitment to build affordable housing. But there is no mandate, direction or authority in this Bill for building affordable housing. That is a fundamental problem with this Bill and ACTO telling you again that the strategy needs a program to fund and build housing is not going to change that government decision.

So, we hope that the process of considering Bill 140 will give this Committee and the Legislature the opportunity to address those concerns of low-income tenants that the Bill actually deals with. We do not believe that the measures proposed in the Bill to address these concerns go far enough to create any real change for the tenants of the affordable housing system except, perhaps, for the change to an annual reporting cycle. This will assist that minority of social housing tenants whose lives are in transition. We ask this Committee to recommend improvements in six areas of the Bill to provide real protection to *all* the tenants whose lives are touched by this vital public program.

1. Do not allow social housing to be sold to the private sector

One of the purposes proposed for the *Housing Services Act* in s. 1 is to provide for community-based delivery of housing services. Community based does not mean privately-owned and run on a for-profit basis. Recently, the largest provider of community-based housing in Canada – Toronto Community Housing Corporation or TCHC – has been shown to have conducted business in a way that appears to be inappropriate for a public-sector organization. These failings have left it - and more importantly the tenants who live in it - vulnerable to ill-considered responses. Some of the ideas that have been suggested to address these failings could result in the squandering of the huge investment that Ontario taxpayers have made in providing homes for disadvantaged people. Ontario's social housing has been estimated by the Provincial auditor to be worth $40 billion. The *Strong Communities through Affordable Housing Act* cannot allow these homes to be put on the market and sold to the highest bidder. Yet Bill 140 removes vital Provincial oversight that could prevent the imprudent selling off of the assets of TCHC or other local housing corporations.

Given these difficult times, Bill 140 must go further than the *Social Housing Reform Act* and prohibit the selling off of social housing. As the tenants of TCHC told the Council of the City of Toronto, "Tenants are not for sale"; "Their homes are not for sale". Part III of the Bill sets out the powers of service managers. Those powers should not include the power to sell off public assets that the people of Ontario have paid for. Part IV of the Bill proposes a number of restrictions on local housing corporations. Further restrictions must be added to prevent local housing corporations from taking any action that would

reduce the number of units of each unit size in their portfolios. Sections 161 to 165 permit housing providers to transfer, mortgage or develop their property with the consent only of the municipality or the dssab. These sections should be changed to ensure that transfers of property in violation of those restrictions do not occur. These requirements could be reinforced by adding to subsection 4(1) a statement that is a matter of provincial interest that existing social housing be owned and managed on a non-profit basis.

In a 2007 study, the Social Housing Services Corporation concludes that the best use of social housing dollars is to preserve and upgrade existing social housing. Yet the private sector wants an ever-larger share of the taxpayer's support of disadvantaged Ontarians. This does not create affordable housing or strong communities. Half a million disadvantaged people live in Ontario's social housing. You must make changes to this Bill that will protect them from the upheavals that are being considered at Toronto City Hall and elsewhere. If you do not make these changes, the tenants and the taxpayers will have the Ontario legislature to blame when local housing corporations are "restructured" out of existence.

Amendments required: Add to subsection 4(1) a statement that *it is a matter of provincial interest that existing social housing be owned and managed on a non-profit basis.*

Add to Part III an additional subsection 13 (1.1) that reads:

The service manager shall not carry out its objectives in a manner that reduces the number of units of each size and type within the service manager's area that are owned by non-profit corporations and co-operatives.

Add to Part IV an additional section (37.1) that reads:

A local housing corporation shall not transfer or encumber any of its assets if such transfer or encumbrance results in a reduction in the number of units of each size and type owned by such corporation.

S. 38 would be amended to invalidate any such transfer.

Delete the word "transfer" and the definition in s. 160.

Delete the word "transfer" in s. 161(2) and the word "transfers" in s. 161(5).

Delete the word "transfer" in s. 162(2).

2. Require independent reviews of decisions under proposed ***Housing Services Act***

The hallmark of administrative justice is a fair and effective review process for decisions that adversely affect Ontarians. Since the introduction of the SHRA, ACTO has been concerned about the process by which decisions under that Act that are adverse to

tenants are made. We are particularly concerned about the resolution of decisions involving rent subsidy disputes between tenants and housing providers. ACTO recommends that review requests under Part X of the *Housing Services Act* be decided by a tripartite panel composed of an employee of a housing provider that did not make the decision under appeal, a housing advocate, and an impartial employee of the municipality or dsaab. This procedure maximizes the appearance and the reality of independence and appropriate expertise.

In 2006/07, MMAH set up a working group, including stakeholders such as the Ontario Non-Profit Housing Association, Social Housing Services Corporation, Co-operative Housing Federation of Canada-Ontario Region and ACTO, to review the SHRA regulations. After extensive negotiation, a consensus of those parties was reached to amend the regulations to provide for a new internal review process based on the principles of disclosure, a right to an oral hearing, a right to a legal representative, written reasons and a section that provided an over-riding discretion to allow the internal reviewer to reinstate the subsidy if it was reasonable to do so in the circumstances. Unfortunately, the Ministry decided not proceed with this proposed amendment.

As a result, the City of Ottawa, with help from ACTO and others, proceeded on its own to establish a transparent, fair and effective social housing appeals process including tripartite appeal panels as proposed above. The City of Ottawa's June 30, 2010 evaluation report on its social housing appeals process was very favourable.

Both social housing providers and tenants have insisted that decisions which affect their rights and privileges must be subject to accessible, fair and independent review. The model developed by the City of Ottawa meets this standard for decisions affecting tenants and people seeking housing. Accordingly, ACTO makes the following recommendation to advance the public interest in promoting fair and effective social housing appeals.

Amendment required: Subsection 155(3) (a) of the proposed *Housing Services Act* regarding the system for dealing with reviews be changed to read:

Requirements
155. *(3) The system must include,*
(a) provision for ~~a~~ ***an independent three-member*** *review ~~body~~* ***panel to hear oral appeals****, including rules for the appointment and removal of members and their remuneration; and*

3. Give the Landlord and Tenant Board the explicit power to determine if a rent set under the *Housing Services Act* is correct before ordering an eviction

Last year, former Chief Justice Patrick LeSage carried out an independent review of the eviction and tragic death of elderly, long-time TCHC tenant Al Gosling. In his Report to TCHC, he told them (at p. 79) to recommend a change to the *Residential Tenancies Act* that would help prevent a repeat of such a tragedy. This change would allow the Landlord and Tenant Board to assess the appropriateness of rent-geared-to-income

decisions in the context of an eviction application. If TCHC made such a recommendation, the Minister of Municipal Affairs and Housing did not act on it. We find it difficult to understand why and thus we ask the Committee to correct this oversight.

Section 203 of the *Residential Tenancies Act* prohibits the Board from making any determination that affects what the proper rent is in a tenancy agreement governed by the *Social Housing Reform Act*. If a social housing landlord applies to the Board for an eviction for non-payment of rent, the Board has to accept, without question, what the landlord says the rent is. This is the case even in the face of evidence that the decision about the rent is wrong or where the landlord has not complied with the SHRA's provisions.

In any other case where there is a claim for non-payment of rent, the Board must begin by determining the legal rent. For social housing tenants, the landlord's assertion as to the lawful rent is taken at face value. These tenants are among the poorest of the poor and an eviction order based on non-payment will also mean loss of the rent subsidy. The consequences for these families are so dramatic that they should not be left with less protection than other tenants.

Bill 140 proposes changes to section 203 of the *Residential Tenancies Act* to bring its wording into conformance with the wording of the new legislation. We ask this Committee to also bring the substance of this section into conformance with the provincial interests proposed for s. 4 of the *Housing Services Act.* Ensure that the system is "focused on achieving positive outcomes for individuals and families" by moving to end unfair evictions that can result in misery and even death. To do so, the Board must be given express jurisdiction to review subsidy revocation decisions under the proposed *Housing Services Act* and to determine a tenant's lawful rent where the tenant is receiving or claims to be eligible for rent-geared-to-income assistance pursuant to the that *Act*.

Amendment required: Change the words "shall not" to "may" in section 203 of the *Residential Tenancies Act* as amended by s. 188(3) of the proposed *Housing Services Act*.

203. *The Board* ~~***shall not***~~ ***may*** *make determinations or review decisions concerning,*

(a) eligibility for rent-geared-to-income assistance as defined in the Housing Services Act, 2010 or the amount of geared-to-income rent payable under that Act; or

(b) eligibility for, or the amount of, any prescribed form of housing assistance.

4. Enact inclusionary housing legislation

Adding to the affordable housing supply in Ontario requires a comprehensive plan with diverse solutions. Clearly the government believes that this is not the time for publicly-funded solutions. While we believe that government leadership and public investment are crucial, private builders can also contribute to the creation of a permanent stock of

affordable housing as part of building new residential developments. The provincial government can help ensure that affordable housing goals are met by enacting legislation that would permit municipalities to adopt mandatory inclusionary housing policies. These policies could balance a local community's need for affordable housing with a fair return for builders.

Inclusionary housing policies, when adopted by a municipality, would require that a certain percentage of new units be affordable to households with low and moderate incomes. Social housing groups could purchase or operate the affordable units and rent them according to local social housing eligibility policies. If subsidies are required for deeper affordability for low-income households, the cost would not be as great. Such policies will be an effective planning tool to help in meeting the provincial interest in allowing for "a range of housing options to meet a broad range of needs". These policies could also combat the "not in my backyard" syndrome as affordable housing becomes a normal part of any new development.

Parkdale-High Park MPP Cheri DiNovo has introduced a private member's bill amending the *Planning Act* to allow for inclusionary housing. Her bill received support from MPPs from all parties (including Donna Cansfield, the Parliamentary Assistant to the Housing Minister) at second reading in the Ontario legislature, and was referred to the General Government Committee for consideration. Despite this support, Bill 58 was not scheduled for public hearings. When Ms DiNovo raised this matter in the Ontario legislature, Finance Minister Dwight Duncan indicated that the provincial government was supportive of inclusionary housing and wanted to "do it right". Now is your chance.

Amendment required: To enable inclusionary housing policies, provisions that authorize municipalities to enact these policies should be added to Bill 140, similar to the proposed amendments to the *Planning Act* that would enable second unit policies.

Inclusionary housing policies

16 (4) Without limiting what an official plan is required to or may contain under subsection (1) or (2), an official plan may contain policies that authorize a required percentage of residential housing units in all new housing developments in the municipality be affordable to low and moderate income households.

No appeal re inclusionary housing policies

17. (24.1.1) Despite subsection (24), there is no appeal in respect of the policies described in subsection 16 (4), including, for greater certainty, any requirements or standards that are part of such policies.

No appeal re inclusionary housing policies

17. (36.1.1) Despite subsection (36), there is no appeal in respect of the policies described in subsection 16 (4), including, for greater certainty, any requirements or standards that are part of such policies.

22. (7.2) (d) amend or revoke the policies described in subsection 16 (4), including, for greater certainty, any requirements or standards that are part of such policies.

No appeal re inclusionary housing policies

34. (19.2) Despite subsection (19), there is no appeal in respect of a by-law that gives effect to the policies described in subsection 16 (4), including, for greater certainty, no appeal in respect of any requirement or standard in such a by-law.

6. The Act is amended by adding the following section:

By-laws to give effect to inclusionary housing policies

35.1 (2) The council of each local municipality shall ensure that the by-laws passed under section 34 give effect to the policies described in subsection 16 (4).

Regulations

(2) The Minister may make regulations,

(c) authorizing the use of residential units referred to in subsection 16 (4);

(d) establishing requirements and standards with respect to residential units referred to in subsection 16 (4).

Regulation applies as zoning by-law

(3) A regulation under subsection (2) applies as though it is a by-law passed under section 34.

Regulation prevails

(4) A regulation under subsection (2) prevails over a by-law passed under section 34 to the extent of any inconsistency, unless the regulation provides otherwise.

Exception

(5) A regulation under subsection (2) may provide that a by-law passed under section 34 prevails over the regulation.

Regulation may be general or particular

(6) A regulation under subsection (2) may be general or particular in its application and may be restricted to those municipalities or parts of municipalities set out in the regulation.

5. Help social assistance recipients achieve self-reliance

Under existing *Social Housing Reform Act* rules, a single person receiving Ontario Disability Support Program (ODSP) benefits living in social housing is subject to a change in their rent calculation once they receive $440 a month from any income source outside the ODSP. This new calculation results in a dramatic rent increase.

John Stapleton, a social policy expert, wrote a paper in November 2010 entitled ***"Zero Dollar Linda".*** The paper exposed the badly conceived policies and counterproductive rules that penalize disabled social housing tenants who try to move beyond ODSP. There is no discretion to relieve these tenants from the penalties of benefit clawbacks and rent increases. If they find paid work or their income increases through access to benefits such as CPP or spousal support, they can be worse off. Their efforts to become more self-reliant leave them with nothing but financial hardship

ACTO welcomes the Bill's proposal to simplify the rent-geared-to-income calculation process so that most tenants would only declare changes in their income once a year. However, more needs to done if the Bill is to implement the Government's declared intention to allow disabled tenants to use extra money from employment to improve their standard of living.

Recommendation: As proposed by the Social Assistance Review Advisory Council in its February 2010 recommendations to the Ontario government for short term rules changes, increase the non-benefit income threshold to 75% of the maximum Ontario Disability Support Program benefits before recipients are subject to the Rent-Geared-to-Income scale.

6. Do not undermine the appointment process for Landlord and Tenant Board members

Since coming to office in 2003, this government has done some good work to improve justice for tenants. The *Tenant Protection Act* was replaced with the *Residential Tenancies Act.* The *Adjudicative Tribunals Accountability, Governance and Appointments Act* was enacted requiring a competitive, merit-based appointment process for the Landlord and Tenant Board. However, Bill 140 proposes to undermine this good work. It allows the Landlord and Tenant Board to appoint employees to take over the functions of the adjudicators who were appointed by the Cabinet and subject to the approval of a standing committee of this Legislature. ACTO is strongly opposed to the "dumbing-down" of this important decision-making power, so we recommend that section 2 and subsection 3 (2) of Schedule 3 be struck.

ACTO and our community legal clinic partners attended virtually every meeting of the province's Long-term Affordable Housing consultation. We have attended every meeting of the Landlord and Tenant Board's Stakeholder Advisory Committee since that body was set up. We meet regularly with officials of the Board to discuss operational issues with the Tenant Duty Counsel Program that we run across the province. We read the Minister's announcement and the document entitled "Building Foundations: Building Futures". Nowhere in any of this did we hear or see anyone advocating that the work of

Order-in-Council appointees be taken over by employees of the Board. It was not until we got to page 83 of the Bill that we found this unpleasant surprise. When we checked the Ministry's website we found their claim that that this proposal would "resolve cases in a more timely fashion". When 90% of the Board's cases are evictions, we can only come to one distressing conclusion – the Minister wants to see quicker evictions of individuals and families.

Allowing evictions to be processed more quickly is in direct conflict with the lofty statements of provincial interest found in s. 4 of Schedule 1. Quick eviction is not "achieving positive outcomes for individuals and families". It is not "addressing the need to first house" those individuals and families. It robs valuable time from people trying to raise the money for their rent payments and creates hardship and public expense. If this Committee supports the provincial interests, in s. 4 of the proposed *Housing Services Act*, then these proposed amendments have to go.

Amendment required: Delete section 2 and subsection 3 (2) of Schedule 3 (proposed *Residential Tenancies Act* section 206.1)

~~**Hearing officers**~~
~~**206.1** (1) The Board may designate one or more employees of the Board as hearing officers for the purposes of this section to exercise the powers and duties of the Board as its delegate.~~

~~**Powers of hearing officer**~~
~~(2) Subject to any restrictions in the regulations, a hearing officer may do the following with respect to an application described in subsection (3):~~

~~1. Hold a hearing.~~
~~2. Make an order that the Board could make, including order made other than in connection with a hearing.~~

~~**Applications**~~
~~(3) The applications with respect to which subsection (2) applies are the following:~~

~~1. An application for which the respondent does not appear at the time scheduled for the hearing.~~
~~2. An application specified in the Rules.~~

~~**Order of Board**~~
~~(4) An order made by a hearing officer under paragraph 2 of subsection (2) is an order of the Board for the purposes of this Act.~~

(2) Subsection 241 (1) of the Act is amended by adding the following paragraph:

~~68.1 prescribing restrictions for the purposes of subsection 206.1 (2);~~