

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**JENNIFER TANUDJAJA, JANICE ARSENAULT, ANSAR MAHMOOD,
BRIAN DUBOURDIEU, CENTRE FOR EQUALITY RIGHTS IN
ACCOMMODATION**

Applicants

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
ATTORNEYGENERAL OF CANADA and
ATTORNEY GENERAL OF ONTARIO**

Respondents

APPLICATION UNDER Rule 14.05(3)(g.1) of the *Rules
of Civil Procedure*, R.R.O. 1990, O. Reg. 194 and under
the *Canadian Charter of Rights and Freedoms*

**AFFIDAVIT OF LEILANI FARHA, EXECUTIVE DIRECTOR OF THE
CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION**

I, Leilani Farha of the City of Ottawa in the Province of Ontario, AFFIRM AS
FOLLOWS:

1. I am the Executive Director of the Centre for Equality Rights in Accommodation

(“CERA”). I have held this position since June 2002. For two years prior to that, I was

the Senior Staff Lawyer and Women's Program Manager at CERA. A copy of my *curriculum vitae* is attached as Exhibit A.

A. Introduction and Overview

2. CERA is an incorporated non-profit organization with registered charitable status that promotes human rights in housing accommodation for vulnerable and disadvantaged groups. CERA is based in Ontario, with offices in Toronto and Ottawa, and has also been very active in promoting human rights in housing elsewhere in Canada and internationally. Under CERA's articles of incorporation, the purpose of the organizations is:

To promote knowledge and enforcement of human rights in accommodation. This will be fulfilled through public education, as well as through the provision of advice, assistance, representation and referral to victims of discrimination in accommodation. To assist victims of discrimination to acquire adequate and affordable housing through enforcing their human rights

A copy of CERA's articles of incorporation is attached and marked as Exhibit B to this Affidavit.

3. As a non-profit corporation, CERA has a formal membership of individuals and organizations who support and direct the work of CERA, voting at annual general meetings and electing CERA's board of directors. Members of CERA include clients (ie, people who have been recipients of CERA's services), former clients, members of groups vulnerable to discrimination in housing and to homelessness, and lawyers or experts in human rights dedicated to promoting the goals of CERA.

4. CERA's by-laws state that membership of CERA is open to:
 - a) Any individual, group or organization who has been a recipient of CERA services and has completed an "application for membership" form thereby affirming agreement with the purpose and objects as set out in the by-laws of this organization.
 - b) Any non-user individual(s) or organization(s) may become a member of CERA by completing an "application for membership" form thereby affirming agreement with the purpose and objects of the corporation as set out in the by-laws.

5. The work CERA does includes:
 1. assisting individuals, households or groups facing discrimination in relation to access to or occupancy of housing;
 2. assisting those facing eviction from housing to avoid eviction or to avoid homelessness if eviction cannot be avoided;
 3. conducting research into issues of housing policy or practices which may lead to homelessness;
 4. identifying and attempting to address systemic barriers to accessing adequate housing faced by vulnerable or disadvantaged groups;
 5. conducting research, public education and legal/judicial education on issues of human rights in housing, housing policy and practices affecting access to adequate housing or ability to remain in existing housing;
 6. assisting governments and policy-makers in identifying causes of and solutions to homelessness or inadequate housing;
 7. providing evidence or expertise to courts, tribunals, human rights bodies, parliamentary and legislative committees, task forces, human rights commissions and other bodies on issues of housing, homelessness and human rights;

8. participating in international human rights processes to enhance compliance with international human rights in Ontario and in Canada and to promote the right to adequate housing; and
 9. taking forward or assisting in interventions in test cases under Ontario's *Human Rights Code*, the *Canadian Charter of Rights and Freedoms* ("the *Charter*") and other laws which CERA judges to be helpful to the interests of the groups CERA serves in terms of protecting their rights and promoting access to or ability to remain in adequate housing.
6. As will be further described below, with support of its members and clients, CERA supplements its individual casework by working with affected groups and individuals to address systemic or structural causes of homelessness or inadequate housing. Clients using CERA's services, as well as those who have become formal members of the organization, often assist in CERA's efforts to address systemic causes of homelessness and to promote changes in policies, practices and legislation to ensure that members of disadvantaged groups are able to access and maintain adequate housing.
7. CERA is the only organization in Canada dedicated to promoting human rights in housing, eliminating housing discrimination and ensuring the right to adequate housing as guaranteed under international human rights law. As a result, CERA has a unique interest and an unparalleled experience in identifying and challenging policies

and practices that lead to homelessness or deny disadvantaged groups access to adequate housing.

8. In recent years, CERA's staff, board, members and clients have become convinced that in order to adequately address the problems of homelessness and inadequate housing among CERA's members and clients, and among disadvantaged groups served by CERA, what is most needed are housing strategies adopted and implemented by both the federal and provincial governments, conforming with recommendations of a number of human rights and parliamentary bodies, as well as experts in housing policy.

9. As will be described below, CERA has appeared before numerous human rights bodies, parliamentary and legislative committees, commissions, and task forces, to urge the adoption of effective housing strategies by the federal and provincial governments. Consistent and repeated recommendations have been made by these bodies, urging both provincial governments and the federal government to adopt housing strategies based on the recommendation of human rights bodies and experts and consistent with CERA's proposals. However, as will be described below, the federal government and the Government of Ontario have not acted on these recommendations. Instead, they have maintained policies that lead to, and fail to address, widespread homelessness and inadequate housing among the groups CERA serves and represents. As a result CERA's clients, members and members of the groups CERA serves, continue to experience the harmful effects of homelessness and

inadequate housing. The refusal of the federal and provincial governments to implement effective strategies to address homelessness and ensure better access to adequate housing is, in CERA's view, the single most important cause of the continued inequality and deprivation experienced by these individuals and groups, leading to serious health effects, vulnerability to violence and severe stress, as will be discussed in further detail below.

10. CERA has always adhered to a multifaceted approach to promoting and advancing the human rights of its members and clients, relying on a wide range of approaches and mechanisms to promote and enforce human rights in housing. Where it is possible to convince governments or landlords to change policies in order to comply with human rights, CERA avoids the expense and delays associated with litigation. CERA also makes use of legislative hearings, international human rights monitoring procedures, task forces, consultations, human rights commission policy reviews and many other review mechanisms, as well as mediation and conciliation procedures to try to address the causes of homelessness and inadequate housing among disadvantaged groups. However, when the needs and rights of marginalized and vulnerable groups are not addressed by parliament, legislatures or relevant private actors despite significant efforts made to provide them with necessary information and explanation of their legal obligations, CERA turns to tribunals and courts to seek remedies for its clients, members and for the groups it serves.

11. As will be described below, CERA has sought out and exhausted all reasonable non-judicial options in its concerted efforts to secure effective federal and provincial housing strategies to protect and ensure the security and health of those who experience the effects of inadequate housing and homelessness. CERA has concluded that it has become necessary to turn to courts to intervene in order to ensure that governments take the necessary measure for the protection of fundamental rights to equality, security and the protection of the sanctity of life of CERA's members and clients. CERA has therefore decided to file an application in the present case in order to place before the Court an account of the range of experiences of the harmful effects of governments' failures to implement effective housing strategies and to seek an effective remedy to the problems of homelessness and inadequate housing faced by CERA's clients and members. This application is based on CERA's long-standing and genuine interest in issues of equality and security in housing and in addressing and reducing homelessness.

B. The History and Mandate of CERA

12. CERA was formed in 1987 by a provincial coalition of low-income families. These families had, the year prior, successfully advocated for major changes to Ontario's *Human Rights Code* to ensure compliance with the newly enacted provisions of the *Charter* and to address the problem of homelessness which was escalating in Ontario at that time. Changes made to the *Code* in order to conform with the *Charter* at this time included amendments to:

1. protect families with children from discrimination in rental housing because of family status;
2. protect young people (16 and 17 year olds) who had left home from being denied the right to sign a lease or to rent an apartment due to age;
3. ensure that the needs of people with disabilities are accommodated where it would not impose undue hardship on those responsible;
4. prohibit any qualification or factor which resulted in the restriction or exclusion of a protected group and where the needs of the group could be accommodated without undue hardship; and
5. prohibit discrimination on the ground of sexual orientation.

13. These amendments (contained in the 1986 *Equality Rights Statute Law Amendment Act*¹) ensured that Ontario's human rights legislation offered some of the best statutory protections from discrimination in housing in Canada and internationally. However, it became clear after the amendments were passed that low-income households and those most vulnerable to homelessness were not enjoying the intended benefit of the improved legislation. They required assistance and advice in order to know their rights and how to claim and enforce them. CERA was established, with funding from charitable foundations, to address the need for an organization to represent individuals facing discrimination and to advance the interests of vulnerable groups denied access to housing in Ontario. Funding was subsequently secured from both provincial and federal government programs, as well as diverse charitable foundations.

¹ *Equality Rights Statute Law Amendment Act*, 1986, SO 1986, c. 64.

14. To meet its objectives, CERA has undertaken a variety of activities and has established several programs including:

- public education and outreach, including research, drafting and dissemination of publications, training and education on rights in housing;
- human rights case work, including providing individualized human rights assistance in litigation;
- test case litigation;
- early intervention-eviction prevention;
- a national women's housing rights program;
- law reform and policy development; and
- international advocacy.

15. Since its formation CERA has provided direct services to, advocated on behalf of and represented thousands of people who face discrimination in housing or are facing eviction and homelessness. The majority of CERA's clients are in need of adequate housing or facing eviction and are therefore either at serious risk of homelessness or they are homeless.

16. CERA is now recognized internationally as a world leader in promoting and protecting human rights in housing and in applying both domestic and international human rights law to address issues of homelessness and poverty. CERA's work has been described

in numerous international publications. CERA is an accredited Non-Governmental Organization with special consultative status with the United Nations, having been recognized for its particular expertise in human rights and housing.

C. CERA's Client and Membership Base: Groups Disadvantaged in Accessing or Maintaining Adequate and Secure Housing

17. CERA's membership is designed to be representative of the clients CERA serves.

CERA's by-laws require that at least 50 per cent of the Board of Directors be members of equality seeking groups. Many members of CERA over the years have experienced discrimination in housing and have experienced the effects of homelessness and inadequate housing. CERA's membership also includes organizations with similar interests and mandates to represent the interests of disadvantaged groups, including groups such as the Centre for Independent Living in Toronto, HIV & AIDS Legal Clinic Ontario, Covenant House and Youth Without Shelter.

18. Clients who use CERA's individualized services are predominantly low-income members of equality-seeking groups – ie. groups facing significant discrimination, unequal access to adequate housing and therefore particular vulnerability to homelessness. Some of the major client-groups with which CERA works include the following:

i) *Women*

19. The majority of CERA's clients are women. The housing and homelessness crisis faced by low-income women tends to be less visible than that of other groups, despite the fact that women encounter some of the most severe housing disadvantages. Women are more likely to be living in poverty and/or to be sole-support caregivers, both of which can cause landlords to exclude them from housing based on either overt or constructive forms of discrimination. In *Kearney v. Bramalea Ltd.*, the Ontario Human Rights Board found that a landlord's relying on a minimum income criterion when selecting prospective tenants violates the *Human Rights Code* and such a practice has a particularly severe effect on single mothers.² The Board accepted evidence that the 30% rent-to-income ratio requirement disqualified more than half of single mothers from renting even low rent apartments. CERA has conducted detailed analysis of the multitude of barriers experienced by women in accessing housing in its 2002 report entitled "Women and Housing in Canada: Barriers to Equality," a copy of which is attached and marked as Exhibit C to this Affidavit.

20. Women leaving abusive relationships are in a particularly precarious and vulnerable situation. Many do not have their own credit or rental history. Credit checks and collecting and assessing information on rental history are common practices in the tenant selection process and are prescribed by the Ontario *Human Rights Code* and regulations. While CERA has urged the Ontario Government to use the regulations to clarify that such information should not be used in a discriminatory manner to

² *Kearney v Bramalea Ltd.*, [1998] OHRCBI 21, 34 CHRR D/1 (available on QL) [*Kearney*].

disqualify those with no credit history or rental history, such as women escaping violence, leaving them without access to housing, the Government has failed to do so. CERA has found that landlords frequently use credit and rental history requirements in a manner that disqualifies women leaving abusive situations.

ii) *Families with Children*

21. Low-income families with children also face significant barriers in trying to access adequate housing. Landlords commonly state that an apartment is ‘not appropriate’ for a family in order to avoid renting to families with children. Advertisements for apartments often feature statements such as ‘not suitable for children’ or ‘suitable for a single person or couple’. The preference for ‘child-free’ buildings is also illustrated by new condominium developments that sell the units based on attracting ‘professionals’ or encouraging ‘urban lifestyles’. In CERA’s experience, these terms are often code for ‘adult only’ policies, resulting in discriminatory rental practices against families with children. Although international human rights bodies have raised concerns urging more concerted efforts to prevent this type of discrimination, the Government of Ontario cut funding to address housing discrimination in the mid-1990s, funding which has never been restored.

22. Families with children also experience significant barriers in acquiring adequate affordable housing when landlords employ occupancy guidelines, either formally or informally. Typically, these occupancy guidelines prohibit more than two people

from occupying a one-bedroom apartment and/or children of the opposite sex sharing a bedroom. Such guidelines screen out lower income families who rely on shared bedrooms in order to secure apartments which they can afford. For low-income families, particularly those with more than two children, finding an affordable and adequate apartment equipped with a bedroom for each child is next to impossible.

23. Occupancy standards used by social housing providers or cooperatives can also be problematic for families with children. Such standards are usually codified in policies or internal/member by-laws that are not easily modified. They are typically based on occupancy guidelines or prescriptions established by federal, provincial or municipal governments. For example, the Canada Mortgage and Housing Corporation developed the National Occupancy Standard (NOS), which recommends one bedroom per adult (spouses can share), and a maximum of two same-sex children per bedroom. The NOS recommends that children of the opposite sex over age five should not share a bedroom.³ The City of Toronto and Government of Ontario have also developed similar guidelines regarding occupancy in social housing units. When these standards are applied in an inflexible manner, they result in low-income families with children having to wait excessively long periods to access subsidized units of the prescribed size. These guidelines, although they are not mandatory, also tend to be followed by private landlords, thereby restricting access to any kind of affordable apartments for larger families with lower incomes.

³ Canada Mortgage and Housing Corporation, Audit and Evaluation Services, *Co-operative Housing Programs Evaluation* (Ottawa: Industry Canada, 2003).

iii) *People with Disabilities*

24. People with mental health disabilities (mental illness) are one of the groups most widely and openly discriminated against by landlords. In 2009 CERA conducted an extensive research study on discrimination in Toronto's rental housing market which showed In 2009 CERA initiated an extensive research study on discrimination in Toronto's rental housing market which showed that people with mental illness experienced the highest level of moderate and severe forms of discrimination of all the vulnerable groups involved in the study. The 2009 report is entitled "Sorry It's Rented", a copy of which is attached and marked as Exhibit D to this Affidavit. In a number of cases, housing providers made blatantly discriminatory and negative comments when inquiries were made about securing housing for people with mental illness. Exacerbating these barriers is the fact that many people with mental health issues are also in receipt of social assistance or living on a very low income.

25. People with physical disabilities also experience discrimination in maintaining adequate housing. CERA has been receiving an increasing number of complaints from individuals whose housing providers refuse to modify units where, because of age or progressive disability, independent living is hindered. The refusal to accommodate has resulted in many individuals being forced to leave their homes. Where individuals are unable to find new accommodation, they may be forced to return to live with family or end up in nursing or care homes. As noted in the 2008 Ontario Human Rights Commission report on human rights and rental housing

entitled “Right at Home: Report on the consultation on human rights and rental housing in Ontario”, “[w]hen people with disabilities are discriminated against, or excluded from housing, this leads to further exclusion, isolation and stereotyping – all of which can lead to institutionalization, homelessness and further discrimination.”⁴ A copy of the “Right at Home Report” is attached and marked as Exhibit E to this Affidavit.

26. For women with disabilities, accessing and maintaining housing can be especially difficult. In its report “Women and Housing in Canada: Barriers to Equality” (Exhibit C), CERA reported that some women with disabilities have been forced into institutional care as a result of reduced or inadequate social programs such as home care. Institutional care facilities can be located far from families and friends, leaving women without a social support network. For women with disabilities who are trying to exit an abusive relationship, finding accessible accommodation can be extremely difficult. Many women’s shelters are not fully accessible.

iv) *People in receipt of social assistance*

27. People in receipt of Ontario Works or Ontario Disability Support Program benefits face a number of severe barriers to accessing housing, including widespread discrimination based on source and level of income combined with the effects of inadequate levels of assistance which make it difficult or impossible to find housing

⁴ Ontario Human Rights Commission, *Right at Home: Report on the consultation on human rights and rental housing in Ontario* (Toronto: Queen’s Printer for Ontario, 2008) at 19.

accommodation that can be afforded. Discrimination on the ground of receipt of social assistance is generally the most common form of discrimination reported to CERA. The 2009 research study on discrimination in Toronto's rental housing market (Exhibit D) that receipt of public assistance is the most common form of discrimination if less severe forms of differential treatment are included in the calculations.

28. This report also showed that compounding the paucity of adequate affordable housing are many other barriers people in receipt of social assistance face when trying to access rental housing. Such barriers include: minimum income requirements which disqualify social assistance recipients from even the most affordable apartments, rent deposit regulations and job tenure requirements used in tenant selection. It is not uncommon in Ontario for housing providers to enforce an explicit policy against renting to people on social assistance in blatant contravention of the *Human Rights Code*.

29. Housing help centres in Toronto that work with CERA find that a major challenge to setting up a housing registry for low-income clients is finding landlords willing to rent to people receiving social assistance. Many landlords employ a minimum income requirement, which is usually the application of a rent-to-income ratio of approximately 30 per cent for any prospective tenant. The benefit structure of social assistance, in which the shelter component is well above 50% of the total income, is

such that prospective tenants in receipt of social assistance cannot satisfy this kind of minimum income requirement.

30. In the 1998 *Kearney* case, CERA represented three clients in a successful human rights challenge to the use of income criteria as a basis on which to deny renting to potential tenants from disadvantaged groups. The Ontario Human Rights Code Board of Inquiry found landlords' use of income criteria or a rent-to-income ratio to exclude people from housing is contrary to Ontario's *Human Rights Code* because it results in the restriction or exclusion from housing on the grounds of receipt of public assistance, citizenship, place of origin, race, sex, marital status, family status and age. The Board also found that landlords' use of income criteria to screen tenants was not reasonable and that relinquishing the use of a rent-to-income ratio would not constitute an undue hardship for housing providers. The Board's ruling in this matter was upheld by the Divisional Court. Subsequent to this ruling, however, the *Human Rights Code* was amended by the Ontario Government to permit the use of rent to income criteria in a manner prescribed by regulations. The effect of these restrictions has been that many landlords continue to exclude social assistance recipients from the most affordable and appropriate housing they can find. As a result, social assistance recipients have very limited housing choices available, and they are forced to rent the most undesirable and over-priced apartments on the market.

31. An additional barrier facing social assistance recipients in need of housing is the requirement of a last month's rent deposit, permitted under Ontario's *Residential*

Tenancies Act. CERA has found this requirement can act as a significant barrier to people receiving social assistance because they are generally unable to secure a deposit from social services until the landlord fills out a “promise of address” form. This delays the application process and often causes social assistance recipients to lose a potential rental unit to someone who can provide a deposit without delay.

32. The inadequacy of the shelter component of social assistance is also a major barrier facing social assistance recipients. Under Ontario Works, a single mother with two children receives a maximum monthly shelter allowance of \$627. In Toronto, the average rent for a two-bedroom apartment in October 2010 was \$1,123. Given the restricted availability of apartments for single mothers on social assistance because of widespread discrimination, it is very difficult for this group to find apartments at less than the average rent. Yet renting an apartment at the average rent would leave an impossible shortfall of almost \$500 a month. This leaves many social assistance recipients either homeless or forced to relinquish other necessities such as food in order to secure and maintain housing.

v) *People who are racialized*

33. Discrimination based on race and colour are not reported as frequently as some other types of discrimination, but this does not necessarily mean that race-based discrimination or discrimination based on intersecting grounds including race is less prevalent. In CERA’s experience over the last 25 years, discrimination based on race

and its related characteristics represent serious barriers to housing. Unfortunately, these cases are often the most difficult to prove and the Government of Ontario has paid little attention to the problems of racial discrimination in housing, even though there is little reason to think it is less prevalent than racial discrimination in employment.

34. As illustrated by CERA's research report, "Sorry it's rented" (Exhibit D), landlords are unlikely to make any outwardly racist comments. Instead, housing providers who do not want to rent to racialized persons generally use indirect ways of discriminating. "Sorry it's rented" showed that in the presence of an application from a racialized tenant, apartments may be suddenly "rented", "off the market" or in use by a family member. Racialized groups are also more likely to be disqualified by landlords' income requirements as they are more vulnerable to poverty and low income, as was established in the *Kearney* case.

vi) *Immigrants, refugees and newcomers*

35. Immigrants, refugees and newcomers face many challenges in accessing housing. Unfortunately, members of these communities often lack familiarity with human rights protections and lack the information and financial resources necessary to challenge discrimination or to speak out about barriers they face in accessing housing. CERA has found that many members of these groups are unaware of their legal rights, especially those who are new arrivals to Canada. Some of these issues were

reported in a Globe and Mail article published in 2000 entitled *Poor? Coloured? Then It's No Vacancy*, which is attached to this affidavit as Exhibit F.

36. It is common for landlords to require newcomers to pay rent up to 12 months in advance, a request rarely made to Canadian-born tenants. In accordance with the Ontario *Residential Tenancies Act*, housing providers are permitted to require applicants to provide a last month's rent deposit, but they are not allowed to require anything beyond this. Despite this legislative restriction, however, many landlords continue to apply a 12 month deposit requirement to new immigrants, insisting that it is necessary to offset their concern that the prospective tenant does not have Canadian credit history or landlord references.

37. As noted above, the Government of Ontario amended the *Human Rights Code* after the Board of Inquiry Decision in *Kearney*. The Board had noted the exclusionary effect of rental history or credit requirements on newcomers and recent immigrants, as well as youth, stating that while refusing to rent to an applicant on the basis of a bad credit or rental history is justified, refusing to rent to newcomers or young people for the reason that they have no rental history or credit record in Canada is discriminatory. However, the amendment to the *Human Rights Code* subsequently passed by the Legislature and the regulations adopted by the Government of Ontario simply state that landlords may require information on credit and rental history "in order to assess the prospective tenant and the landlord may select or refuse the

prospective tenant accordingly.”⁵ In CERA’s experience, the legislative amendment and the regulations have encouraged landlords to utilize rental and credit history in a manner which tends to disqualify newcomers and immigrants.

38. The amendments and the regulation introduced following the *Kearney* decision also authorized the use of guarantors without any clarification that such requirements should not be used in a way that will exclude newcomers. CERA has found that landlords frequently require newcomers and refugees to secure guarantors who have substantial incomes in order to acquire housing. This practice results in the exclusion from housing of newcomer applicants with no access to a guarantor. CERA continues to receive reports from newcomers that landlords are requiring them to provide excessive rent deposits or to provide guarantors when this is impossible for them.

39. Immigrants, newcomers and refugees may also experience adverse effects of occupancy rules that are based on culturally determined notions of a traditional family with separate bedrooms. Occupancy rules that only allow a certain number of people to live in a unit or restrictions to nuclear families create challenges for larger, extended newcomer families who may be used to sharing bedrooms.

CERA has also found that race and/or colour intersects with immigrant, newcomer and refugee communities in very specific ways. While all immigrants potentially

⁵ O Reg 284/05, s 1(2).

experience barriers in accessing housing, racialized immigrant groups often face greater challenges. For example, a landlord may require co-signors for all newcomers, but will deny tenancy to racialized applicants, particularly those of South Asian or African descent, based on concerns about ‘cooking smells’ and ‘extended family’.

vii) *Youth*

40. CERA has found that youth are also significantly disadvantaged in trying to access housing, and are therefore particularly vulnerable to homelessness. Young single mothers in particular tend to encounter significant discrimination in accessing housing.

41. As part of its community education/outreach work, CERA conducts workshops with homeless or street involved youth. These young people (16-24 years) report that it is very common to be refused housing because of age. Often young people internalize discrimination, believing that landlords are justified in not renting to them because of a combination of age, low-income and/or receipt of public assistance. Landlords sometimes refuse to accept tenants if their references are from boarding houses or room and board shelters, where young people often live after leaving home.

42. CERA has also found that youth experience similar challenges to newcomers and refugees in the housing market, because many young people are also first-time renters

with no rental or credit history. The amendment made to the *Human Rights Code* and the Regulations referred to above, authorizing the use of credit and rental history information without ensuring adequate protection for groups who cannot provide this information, therefore have had a detrimental effect on young people. Youth also encounter additional barriers in securing housing as a result of their limited work experience. Landlords frequently require applicants to demonstrate employment security either through proof of permanent employment or satisfying minimum tenure requirements with a particular employer. These requirements can result in the immediate disqualification of young applicants who have no employment history or only have limited employment experience.

43. In several cases taken forward by CERA, Boards of Inquiry have affirmed that job tenure requirements unfairly discriminate against equality seeking groups and violate Ontario's *Human Rights Code*. For example, in *Sinclair v. Morris A. Hunter Investments Ltd.*,⁶ the Board of Inquiry held that permanent employment and minimum tenure job requirements violated the *Human Rights Code* on the basis that they discriminated against young people. Little has been done to promote or enforce the Board rulings and, despite this finding, as with other discriminatory barriers to housing, CERA continues to find that landlords nonetheless use job tenure requirements as a means of screening out prospective tenants, particularly young people.

⁶ *Sinclair v Morris A Hunter Investments Ltd*, [2000] OHRCBI 24, 41 CHRR D/98 (available on QL).

44. Discrimination in housing against youth and the failure by governments to address the causes of youth homelessness means that youth are often confronted with the choice of returning to abusive family situations, living on the street, couch surfing with friends or living in shelters.

viii) *Homeless Persons*

45. Once someone becomes homeless, she or he will encounter a seemingly insurmountable number of barriers in their attempts to get out of homelessness by securing adequate and affordable housing. There is a deeply entrenched stigma associated with people who are homeless, including those who are living in shelters. They are viewed as highly suspect by prospective landlords, their applications for tenancy usually rejected because they are considered likely to be involved in drugs or other illegal activity or unlikely to be able to sustain a tenancy. There is ample evidence to contradict these false stereotypes. The City of Toronto's Emergency Homelessness Pilot Project initiated in 2002 to help address the housing needs of homeless people who had been living in "tent city" located near Toronto's downtown waterfront for example, included a useful follow-up study of the tenancies established by those who had lived in tent city. These individuals were perceived as the most unlikely to be able to maintain good tenancies because of the effects of long term homelessness. However, longitudinal studies found these individuals to be highly successful tenants. After being provided with shelter subsidies and assisted in finding private apartments, ninety percent of participants were able to maintain their

housing.⁷ The study found that participants' reliability as tenants increased over time as their overall physical and mental health and self-esteem improved and stabilized. When landlords renting to program participants were surveyed, the majority reported that they were satisfied with the program and with the tenants. Despite these findings, the negative stereotypes and failures of governments to provide the kind of assistance that was provided to those in tent city leaves many people trapped in homelessness.

46. The stigma and stereotypes of shelter residents has led some housing providers to immediately exclude prospective tenants whose only reference is from a shelter or rooming/boarding house. Even where they are not excluded outright, people living in shelters in Ontario receive only a personal needs allowance and are unable to offer a landlord a rent deposit without securing in advance an agreement to rent. It is rare for an affordable apartment to be vacant for long enough for this to be processed, and landlords will usually be offered a rent deposit from another tenant first. The low amount of social assistance income received by those residing in a shelter also means that any kind of income qualifications applied by landlords, will exclude these individuals from the vast majority of the rental market. As noted above, the regulations to the Ontario *Human Rights Code* are interpreted by landlords as permitting refusals of tenancy in situations such as this, where a reference from a current landlord is unavailable.

⁷ Gloria Gallant, Joyce Brown and Jaques Tremblay, *From Tent City To Housing: An Evaluation of the City of Toronto's Emergency Homelessness Pilot Project* (June 2004).

47. Many shelter residents do not have a direct phone line at which they can be reached, which can make the search for accommodation nearly impossible and certainly disadvantageous compared to those with easy access to a telephone. Additionally, people living in shelters tend to have limited computer and Internet access which restricts their ability to search for and maintain contact with potential landlords.

48. When working to secure a place of residence, if applicants have not already been disqualified by income qualifications and reference requirements, homeless applicants are often disqualified after their personal interaction with prospective landlords. The stigma and dehumanization linked to homelessness makes it extremely difficult for homeless people to present themselves as desirable tenants in the eyes of prospective landlords. The longer homelessness lasts, the more difficult it becomes to counteract the effects of the stigmatization and prejudice. Trying to survive in public places, with an increasing number of laws and regulations aimed at regulating activities of homeless people increases the likelihood of a criminal record or a record of an unpaid fine, creating a negative credit rating. Despite recommendations from many human rights bodies for a prohibition of discrimination on the ground of “social condition” in human rights legislation in Canada, neither the *Canadian Human Rights Act*, nor Ontario’s *Human Rights Code* has been amended to prohibit unreasonable discrimination against those who are homeless on the ground of their social condition. This means that once a person becomes homeless, a new set of prejudices, stereotypes and a range of discriminatory treatment are set in motion which makes exit from homelessness much more difficult to find.

D. CERA's Programs and Strategies on Behalf of Disadvantaged Groups in Need of Adequate Housing

i) Public Education and Outreach

49. CERA's education and outreach includes conducting a variety of activities such as:

1. public education seminars for low income and vulnerable communities and their service providers in communities throughout Ontario and nationally;
2. developing and disseminating resource tools such as national print and online guides to understanding and addressing human rights in housing; and
3. the development of other print materials and web resources.

50. Every year CERA conducts between 30-50 public education seminars throughout Ontario and nationally with community organizations, social service providers, university and college students, and people who are living in precarious housing and or are homeless. These seminars focus on identifying and addressing discrimination in housing, barriers facing disadvantaged groups seeking access to adequate housing, and causes of homelessness. CERA assists affected individuals and groups to identify ways in which domestic human rights legislation, the *Charter* and international human rights law can be applied to help to address these issues.

51. CERA has also established housing clinics in Ontario for hard-to-reach constituencies. For example, in Ottawa, CERA staff have established weekly housing clinics at a downtown women's drop-in centre and at a centre for homeless youth. Using on-line technology, CERA has also established "virtual" or cyber housing clinics in more remote areas of Ontario. CERA also provides public education in other provinces and territories, publishing and disseminating brochures and training manuals on human rights in housing to explain how discrimination can be addressed in different jurisdictions.
52. CERA undertakes independent research and analysis and has published several reports on housing, homelessness and human rights. For example, in 1998 CERA published "Human Rights, Access, and Equity: CERA's Recommendations to the Homelessness Action Task Force," November 1998. This Report was extensively cited in the final Report of the Mayor's Homelessness Action Task Force (1999) – 'The Golden Report'. A copy of the 1998 CERA Report and 'The Golden Report' (Report of the Homelessness Action Task Force) are marked respectively as Exhibit G and H and attached to this Affidavit. As noted above, CERA published the report on "Women and Housing in Canada: Barriers to Equality" (Exhibit C) in 2002, providing an overview of federal policies and programs that contribute to women's housing insecurity and homelessness. In 2009 CERA published, "'Sorry It's Rented' Measuring Discrimination in Toronto's Rental Housing Market," the first quantitative study on discrimination in housing in Canada (Exhibit D).

ii) Human Rights Case Work and Eviction Prevention

53. CERA provides individualized services to approximately 500 individuals and families facing discrimination in housing every year in communities across Ontario. Many of the individuals served are homeless or at risk of homelessness. Much of CERA's day-to-day case work involves trying to prevent our clients from becoming homeless. Often, this involves negotiating with housing providers to inform them of their obligations under the *Human Rights Code* and encouraging them to agree to rent to disadvantaged households. Where appropriate, CERA also helps claimants file applications with the Ontario Human Rights Tribunal and represents them throughout the process.

54. CERA also runs an Early Intervention Eviction Prevention program. This program assists close to 1,500 individuals and families each year who are facing eviction in Toronto. CERA's main goal is to help tenants avoid eviction and stay in their homes, or where eviction cannot be avoided, to ensure that individuals and families are not rendered homeless. This often involves mediating with landlords regarding rental arrears or trying to solve other problems, such as when Ontario Works cheques are held back, which places tenants in arrears. CERA's eviction prevention services include:

1. ensuring tenants know their rights and the eviction process under the *Residential Tenancies Act*;
2. helping tenants prepare for hearings at the Landlord and Tenant Board;

3. advocating and providing telephone mediation on behalf of tenants with landlords and social service agencies;
4. working with the Greater Toronto Apartment Association and landlords on eviction prevention strategies for tenants;
5. referring tenants to income support services, housing help, counselling services and other sources of legal assistance; and
6. providing public education workshops on tenant rights and eviction prevention under the *Residential Tenancies Act*.

iii) Test Case Litigation

55. CERA has represented clients and acted in an advisory capacity in many groundbreaking legal challenges to policies and practices which deny disadvantaged groups access to housing. These include challenges to:

1. the use of rent-to-income ratios to screen out low income tenants: *Kearney et al v. Bramalea Ltmd., et al.* (1998) and *Vander Schaaf v. M & R Property Management Ltd. and Gerald Pearlstein* (2000);
2. credit and reference requirements that disadvantage recent immigrants and refugees: *Aslam Ahmed v Shelter Canadian Properties Ltd.* (2002);
3. occupancy rules that deny families access to housing: *Maria Cunanan v Boolean Developments Ltd.* (2003);

4. questions on tenancy applications that target families with children:
Albena St. Hill v VRM Investments Ltd. and Ray Milosevic. (2004);
5. the use of job tenure to screen out young, first-time renters and newcomers: *Newby and Sinclair v Morris A. Hunter Investments (2001);*
6. social housing subsidy rules that apply only to social assistance recipients:
Eleanor Iness v Caroline Co-operative Homes Inc. (2006); and
7. inadequate levels of assistance for housing costs within social assistance benefits: *C B v Her Majesty the Queen in Right of Ontario, as represented by the Minister of Community, Family and Children's Social Services* (Unreported, Ontario Human Rights Commission, File No JWIS-5JUR3L, 17 March 2004).

56. CERA has worked at a national level to promote interpretations and applications of the *Canadian Charter of Rights and Freedoms* to address the rights of disadvantaged groups in need of housing. In this regard, CERA worked in collaboration with the Charter Committee on Poverty Issues (CCPI), a national committee of low-income people and legal experts formed to advance the rights of poor people in Canada. CERA has assisted CCPI in test case litigation involving particularly marginalized groups. For example, CERA was recently involved in a case at the Federal Court of Appeal to provide legal research and argument on the question of whether poverty is an analogous ground of discrimination under section 15 of the *Charter*.⁸

⁸ *Toussaint v Canada (Attorney General)* 2011 FCA 213.

57. CERA also co-ordinated CCPI's intervention at the Supreme Court of Canada in *Gosselin v Québec (Attorney General)*, [2002] 4 SCR 429 - the only *Charter* case to date in which the Court had the opportunity to consider evidence of homelessness and the extent to which s.7 of the *Charter* places obligations on governments to provide an adequate level of social assistance in order to prevent homelessness and its adverse effects.
58. CERA also co-ordinated CCPI's intervention in the case of *New Brunswick (Minister of Health and Community Services) v G. (J.)*, [1999] 3 SCR 46 dealing with access to legal aid for those living in poverty; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, on the status of international human rights law in the exercise of administrative discretion; *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 on positive obligations to address needs of disadvantaged groups under section 15 of the *Charter*; *Thibaudeau v Canada*, [1995] 2 SCR 627 on the rights of single mothers; *Walker v Prince Edward Island*, [1995] 2 SCR 407 and *R. v Prosper*, [1994] 3 SCR 236 on the right to state-funded counsel for impoverished accused; and *Symes v Canada*, [1993] 4 SCR 695 on the application of section 15 to socio-economic policies and taxation.
59. CERA has engaged in this kind of test case litigation work because we believe that recognition by the courts of the issues that affect the personal security, health and equal status of people living in poverty or homelessness in the interpretation and application of the *Charter* is a critical component of our mandate and work to address

and remedy the structural and systemic causes of increasing homelessness and inequality in housing in Canada.

iv) **National Women's Housing Rights Program**

60. CERA established and now coordinates the national Women's Housing Equality Network (WHEN), Canada's first national network devoted to addressing housing issues and homelessness for low-income women. The network is comprised of one principle member from each of the provinces and territories, as well as members representing particular constituencies such as girls and rural women. CERA worked very closely with WHEN members in Whitehorse, Edmonton, Regina and Saint John to assess the housing conditions of low-income women in each of these communities and develop community plans to address inadequate housing and the threat of homelessness for women. In some communities this resulted in law reform activities, in others it contributed to the creation of municipal housing strategies, or the formation of *ad hoc* advocacy groups focused on low-income women's housing issues.

61. WHEN has created a number of tools and resources analyzing low-income women's experiences of precarious housing and homelessness. WHEN has made several submissions to United Nations treaty monitoring bodies on low-income women's housing conditions in Canada including submissions to the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of

Discrimination Against Women (CEDAW). WHEN also made a submission to the Human Rights Council for the Universal Periodic Review of Canada in February 2009, which is attached to this Affidavit as Exhibit I.

v) Law Reform and Policy Development to Address Homelessness and Inadequate Housing Among Groups Represented by CERA.

62. CERA has worked extensively on law reform and policy development to address those barriers to housing that can render the most disadvantaged groups either homeless or living in inadequate, precarious housing. A priority area of work in recent years for CERA has been to assist governments and reviewing bodies to better understand the need for housing strategies based on human rights principles.

63. For example, CERA recently worked with federal opposition parties on Bill C-304, *An Act to Secure, Adequate, Accessible and Affordable Housing for Canadians*. Partially as a result of CERA's engagement with this private member's Bill, the Bill was amended at Committee to ensure that the development of a national housing strategy called for by the Bill would include a clear and strong commitment to the right to adequate housing, as guaranteed under international human rights law, as well as some of the key features identified by international human rights bodies and experts as being necessary to make a housing strategy effective and in compliance with fundamental human rights. In particular, Bill C-304 was amended at second reading to include the following characteristics:

1. targets and timelines for the elimination of homelessness;
2. priority for disadvantaged groups including women leaving violent households and persons with disabilities;
3. a process for the independent review, addressing and reporting of complaints about possible violations of the right to adequate housing;
4. a process for review and follow-up on any concerns or recommendations from United Nations human rights bodies with respect to the right to adequate housing; and
5. a key role for civil society organizations, including those representing groups in need of housing, and Aboriginal communities, in designing the delivery, monitoring and evaluation of programs required to implement the right to adequate housing.

64. Bill C-304 also included a number of other important components critical to the needs and rights of CERA's clients, including a requirement that the strategy would ensure the provision of financial support for those who could not otherwise afford the cost of adequate housing and a commitment to the provision of adequate, safe and secure housing through a variety of housing and support programs, relying on both private and non-profit housing forms. Bill C-304 was supported by all three opposition parties and organizations across Canada and was referred for third reading at the House of Commons after being further amended to recognize Quebec's commitment to the right to adequate housing through its formal adherence to international human

rights treaties ratified by Canada. Unfortunately, before the Bill could be finally voted on, the spring 2011 federal election was called and the Bill was not passed.

65. At the third reading of this Bill in the House of Commons, MP Megan Leslie, speaking in support of the Bill stated, “I would like to single out, in particular, the work of Centre for Equality Rights in Accommodation, CERA. It was there from the beginning. It came up with great solutions to some of the legislative problems we had with the Bill. It really did such amazing work to make the Bill so much stronger.”⁹ A copy of the Bill is attached and marked as Exhibit J to this Affidavit.

66. In 2009 CERA also appeared before the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, during the Committee’s deliberations on how the federal government could better address poverty in Canada. CERA’s submissions focused on the importance of using a human rights framework when developing policy and legislation aimed at reducing or eliminating poverty, a perspective that was echoed in the final report, *Federal Poverty Reduction Plan: Working in Partnership Towards Reducing Poverty in Canada*. A copy of CERA’s submission to the Committee and the final report of the Committee are attached and marked respectively as Exhibit K and L to this Affidavit.

⁹ Canada, House of Commons, *Official Report of Debates (Hansard)* 40th Parl, 3rd Sess, No 099 (18 November 2010) at 1735 (Megan Leslie).

67. CERA has also worked with a number of other organizations such as Amnesty International, the Council of Canadians with Disabilities, the Social Rights Advocacy Centre (SRAC), and the Native Women's Association of Canada to encourage the federal government to develop mechanisms and processes to implement international human rights law domestically. This has involved presentations before the Senate Committee on Human Rights in March 2009 (a copy of the CERA's submission is attached and marked as Exhibit M), and the House of Commons Sub-Committee on International Human Rights of the Standing Committee on Foreign Affairs and International Development in April 2010. A copy of CERA's submission is attached and marked as Exhibit N.

68. The Report of the Sub-Committee on International Human Rights of the Standing Committee on Foreign Affairs and International Development makes reference to CERA's submissions as follows:

According to Ms. Farha of the Centre for Equality Rights in Accommodation, there is currently a piece of legislation before Parliament that attempts to fill this gap with respect to adequate, accessible and affordable housing. Private Members Bill C-304, sponsored by Libby Davies, MP for Vancouver East, calls for the federal-provincial-territorial governments to "hammer out a national strategy," in consultation with civil society and aboriginal groups, and set timelines and targets for ending homelessness in Canada. This Bill also calls for the "development of a process for the independent review of complaints about possible violations of the right to adequate housing". This Bill, which Ms. Farha describes as "model legislation", directly responds to concerns repeatedly raised by UN treaty bodies and recently, by the UPR.

69. CERA has also worked in compliance with international and domestic human rights standards and designed to effectively reduce and eliminate homelessness among the

groups CERA serves. CERA recently appeared before the Ontario Provincial Legislature's Justice Policy Committee in their deliberations and review of Bill 140, the *Strong Communities through Affordable Housing Act, 2011*, which provides for the implementation of key components of Ontario's *Long-Term Affordable Housing Strategy*. A copy of the Act is attached and marked as Exhibit O to this Affidavit.

70. During hearings on the Bill before the Standing Committee on Justice Policy CERA and a number of other organizations including the Social Rights Advocacy Centre (SRAC), the Wellesley Institute, the Ontario Nurses' Association, the Federation of Metro Tenants' Associations and other community groups reinforced the critical need for Ontario to amend its legislation to create a human rights framework, drawing on international human rights norms. CERA presented before the Committee on behalf of CERA, outlining five key components that should be incorporated into the housing strategy legislation to ensure compliance with international human rights law and the recommendations of UN treaty bodies, so that the housing strategy would:

1. prioritize needs of those groups most vulnerable to homelessness and inadequate housing;
2. ensure meaningful participation of all affected groups in the design, implementation and monitoring of the strategy;
3. set enforceable targets and timelines;
4. include accountability mechanisms, independent monitoring and an individual complaints mechanism; and

5. be based in human rights law, including the international right to adequate housing.¹⁰

A copy of CERA's submission to the Committee is attached and marked as Exhibit P to this Affidavit.

71. NDP MPP Cheri DiNovo proposed a number of key amendments to the legislation that would have implemented these recommendations. Tabled amendments would have required the provincial Minister of Municipal Affairs and Housing to negotiate the terms of a rights-based provincial-municipal housing strategy that would include recognition of housing as a human right; establish clear goals and timetables for reducing and eliminating homelessness; ensure independent monitoring of progress in meeting agreed-upon targets; include a complaints mechanism for violations of the right to adequate housing; and ensure that measures would be taken in future to ensure follow-up to concerns and recommendations from international human rights bodies. These amendments were rejected by the Government.

72. While CERA's eviction prevention program has been a successful initiative, many unnecessary evictions continue to occur throughout Ontario because of policies of the Ontario Government. Studies by CERA of evictions in Ontario in earlier years showed that of the tens of thousands of Ontario households evicted each year, the

¹⁰ Ontario, Legislative Assembly, Standing Committee on Justice Policy, "Bill 140, Strong Communities through Affordable Housing Act, 2011" in *Official Report of Debates (Hansard)*, No JP-8 (24 March 2011) [Ontario, SCJP, 24 March 2011].

majority owed less than one month's rent.¹¹ The Landlord and Tenant Board does not currently compile data on the amount of arrears owed when tenancies are terminated for arrears of rent, but it is likely that many tenants continue to be evicted into homelessness unnecessarily, when other measures could suffice to provide landlords with recovery of arrears. There is no legislative requirement in Ontario ensuring that adjudicators will seek alternative measures short of termination of tenancy where households will be at risk of homelessness upon eviction; and unlike governments in other countries, the Government of Ontario assumes no responsibility for ensuring that evicted tenants are not rendered homeless.

73. There are also many lower income households in Ontario who have no security of tenure simply because they share bathroom or kitchen facilities with an owner. As will be described below, CERA has brought these issues to the attention of UN human rights bodies but the Government of Ontario has not implemented the recommendations made by these bodies that governments in Canada prevent evictions into homelessness and extend security of tenure protections to include all tenants.

74. Instead of implementing the recommendations of UN human rights bodies, the Government of Ontario has recently weakened protections through amendments to that *Residential Tenancies Act*, included in the *Strong Communities through Affordable Housing Act*. The Act was amended to permit the Landlord and Tenant

¹¹ Centre for Equality Rights in Accommodation, National Working Group on Women and Housing & Social Rights Advocacy Centre, *Submission to the Ontario Human Rights Commission on Human Rights and Rental Housing In Ontario* (2007) at 35-36, online: Centre for Equality Rights in Accommodation <<http://www.equalityrights.org/cera/wp-content/uploads/2010/04/FINAL-CERA-SRAC-NWG-Submissionto-OHR-on-HR-in-Housing-07Sep20.doc>>.

Board to appoint employees to take over the functions previously reserved to adjudicators appointed by the Cabinet and subject to the approval of a standing committee of the Legislature. Delegating such important adjudicative functions to government staff, involving the interpretation and application of the legislation and the exercise of authorized discretion to decide if a household will be evicted from a home and potentially rendered homeless represents, in CERA's view, a serious step backwards.

vi) Using International Human Rights and Procedures

75. CERA is internationally recognized for its expertise and important work on the right to adequate housing, on women's right to housing, on discrimination and equality in housing and on the prevention of evictions. CERA's special consultative status with the United Nations Economic and Social Council (ECOSOC) recognizes its special competence in these fields.

76. CERA has a long history of participating in the review of Canada's human rights record by international human rights bodies to ensure they are provided with information regarding Canada's compliance with its international human rights obligations.

77. In 1993 CERA co-ordinated and represented the first domestic NGOs to appear before any United Nations human rights treaty monitoring body to make oral

submissions with respect to the periodic review of a State party. CERA successfully petitioned for a new procedure to permit an oral presentation before the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR), focusing on the emergence of homelessness and increased poverty in Canada at that time. CERA's innovative work precipitated new procedures in the United Nations human rights system to permit NGOs to participate more effectively in periodic reviews of State parties' compliance with various international human rights treaties.

78. Since its 1993 initiative, CERA has appeared before various United Nations and regional human rights bodies, including subsequent reviews of Canada by the CESCR in 1998 and 2006. In 1998, CERA and many other NGOs and experts raised concerns about massive cuts to housing and income assistance programs between 1993 and 1998 that had led to unreasonable increases in homelessness. The CESCR stated in its Concluding Observations that it was "gravely concerned that such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada's 10 largest cities have now declared homelessness a national disaster."¹² The Committee recommended that:

...the federal provincial and territorial governments address homelessness and inadequate housing as a national emergency by reinstating or increasing, as the case may be, social housing programmes 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, providing adequate housing support services for persons with disabilities, improving protection of security of tenure for tenants and improving

¹² Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada, (nineteenth session, 1998), UN Doc E/C.12/1/Add.31 at para 24.

protection of affordable rental housing stock from conversion to other uses. The Committee urges the State party to implement a national strategy for the reduction of homelessness and poverty.¹³

A copy of the 1998 Concluding Observations of the CESCR is attached and marked as Exhibit Q to this Affidavit.

79. In 1999 CERA also attended Canada's review by the Human Rights Committee (HRC) that monitors States' compliance with the International Covenant on Civil and Political Rights (ICCPR). In response to submissions from CERA and other NGOs and experts, the HRC noted in its Concluding Observations the effects of homelessness on health and on the right to life, stating that "positive measures are required by article 6 [the right to life] to address this serious problem."¹⁴ A copy of the 1999 Concluding Observations of the HRC is attached and marked as Exhibit R to this Affidavit.

80. In its 2006 appearance before the CESCR, CERA recommended that the Government of Canada "should adopt a national housing strategy that includes principles of equality and non-discrimination to reduce homelessness and poverty" and that it "should establish a long-term, adequately resourced strategy to address the causes and consequences of the homelessness crisis in Canada." A copy of the CERA's 2006 submission to the CESCR is attached and marked as Exhibit S to this Affidavit. In its 2006 Concluding Observations on its review of Canada, the CESCR reiterated its

¹³ *Ibid* at para 46.

¹⁴ United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee, Canada*, UNHRCOR, 65th Sess, UN Doc CCPR/C/79/Add.105, (1999) at para 12.

1998 recommendation that the Committee urges “the State party to implement a national strategy for the reduction of homelessness that includes measureable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with Covenant standards.”¹⁵ A copy of the 2006 Concluding Observations of the CESCR is attached and marked as Exhibit T to this Affidavit.

81. In the UN Human Rights Committee’s 2006 review of Canada, CERA once again made submissions to the Committee recommending that, “this Committee call on the Canadian Government in co-operation with the provinces to: develop a comprehensive national strategy to address homelessness and the affordable housing crisis.” A copy of CERA’s submission to the HRC for its 2006 review of Canada is attached and marked as Exhibit U to this Affidavit. In its Concluding Observations, the Committee highlighted the duty of states (under Article 26 of the ICCPR) to protect vulnerable groups recommending that “the State party, including all governments at the provincial and territorial level, should increase its efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.”¹⁶ A copy of the

¹⁵ Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada, (thirty sixth session, 2006), UN Doc E/C.12/CAN/CO/5 at para 62.

¹⁶ Human Rights Committee (HRC), Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant Concluding Observations of the Human Rights Committee: Canada, (eighty-fifth session, 2006), UN Doc CCPR/C/CAN/CO/5 at para 17.

2006 Concluding Observations of the HRC is attached and marked as Exhibit V to this Affidavit.

82. CERA has also raised concerns about the effects of government programs and policies in the area of housing and homelessness on women before the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW). CERA assisted in the preparation of an NGO report submitted to the CEDAW Working Group outlining the severity of the homelessness crisis facing women noting that:

The Government of Canada has done little to address this crisis. Overall, the Government of Canada has refused to take a leadership role. For example, despite the fact that UN treaty monitoring bodies (eg: CESCR (1998, 2006), HRC (1999)) have repeatedly expressed concern about the housing and homelessness crisis in Canada, the government of Canada has failed to implement the recommendations of treaty monitoring bodies, such as the adoption of a national housing strategy.

83. The submission prepared by CERA for the NGO Coalition made the following 4 recommendations with regards to women's right to adequate housing:

1. the government of Canada must play a central leadership role to address the housing and homelessness crisis in Canada. It cannot exempt itself from meeting its international human rights obligations in this regard on the basis of constitutional jurisdiction;
2. the government of Canada must adopt a national housing strategy, in consultation with housing and women's organizations, that uses an equality rights framework and concretely addresses women's housing needs. This strategy must be integrated with programs and policies aimed at addressing women's poverty;
3. the government of Canada must ensure its expenditures in the areas of housing and homelessness are at requisite levels to ensure the most disadvantaged groups of women in Canada are adequately housed; and

4. the government of Canada must implement the recommendations of all UN Treaty monitoring bodies.

A copy of the 2008 CERA/FAFIA submissions to the CEDAW Committee is attached and marked as Exhibit W to this Affidavit.

84. In response to these submissions, in its 2008 Concluding Observations of Canada the CEDAW Committee noted that it “regrets the absence of a national housing strategy and expresses concern at the current severe housing shortage, in particular in aboriginal communities, and at the high costs of rent and the impact thereof on women. The Committee is particularly concerned at the impact of the lack of affordable childcare and affordable housing on low-income women with families.”¹⁷ A copy of the 2008 Concluding observations of the CEDAW Committee is attached and marked as Exhibit X to this Affidavit.

85. In October 2007 at the invitation of the Government of Canada, the United Nations Special Rapporteur on Adequate Housing conducted a two-week mission to Canada. UN Special Rapporteurs are independent experts appointed by and reporting to the United Nations Human Rights Council to investigate states’ compliance with international human rights. The visit focused on four areas: homelessness; women and their right to adequate housing; Aboriginal populations; and the possible impact of the 2010 Olympic Games on the right to adequate housing in Vancouver. CERA organized and hosted a half-day meeting between the Special Rapporteur and national

¹⁷ Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Canada, (forty second session, 2008), UN Doc CEDAW/C/CAN/CO/7 at para 39.

human rights and housing organizations in Ottawa as well as organized a meeting in Toronto for the Special Rapporteur to hear from women's housing advocates.

86. Following extensive consultations and investigations across Canada, the Special Rapporteur prepared a Report with Recommendations, which included that Canada “adopt a comprehensive and coordinated national housing policy based on indivisibility of human rights and the protection of the most vulnerable. This national strategy should include measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms.”¹⁸

87. As part of his mandate, the UN Special Rapporteur on Adequate Housing also attended regional consultations to receive information about women's housing experiences. In late 2005 CERA's Women's Program, co-organized the North American consultation in Washington D.C. CERA facilitated the attendance of a Canadian delegation of seven women from across the country to testify about their experiences of housing rights violations. As a result of these consultations and other observations, the Special Rapporteur noted that Canada is one of the few countries in the world without a national housing strategy and that this situation has a particularly discriminatory impact on women and other vulnerable populations.

¹⁸ United Nations Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Miloon Kothari - Addendum - Mission to Canada (9 to 22 October 2007)*, UN Human Rights Council OR, 10th Sess, UN Doc A/HRC/10/7/Add.3, (2009) at para 90.

88. In early 2009, CERA received funding from the federal government's Department of Canadian Heritage to coordinate a national process leading up to Canada's Universal Periodic Review (UPR) at the United Nations Human Rights Council. Under the UPR, UN member states review the human rights records of other member states and make recommendations on how they could improve their adherence to international human rights obligations. The process established at the Human Rights Council recognizes the important role of NGOs in providing relevant information and strongly encourages states under review to facilitate domestic consultations with NGOs in advance of the Review.

89. CERA helped to organize, facilitate, and chair meetings with NGO representatives and federal government officials in 5 cities across Canada (Ottawa, Toronto, Winnipeg, Vancouver and Halifax), with close to 200 NGOs involved.

90. Drawing on these meetings, a briefing document outlining major human rights concerns was prepared. The Briefing Document, entitled "The Universal Periodic Review of Canada: February 2009: An Overview of a Select Number Canadian NGO Concerns and Recommendations" highlighted poverty and homelessness as the issues of greatest concern to all NGOs, Aboriginal communities and stakeholders, and strongly recommended the development of human rights based strategies to address both. With regards to housing and homelessness the NGO coalition made five specific recommendations:

1. the right to adequate housing should be enshrined in all relevant legislation across Canada, including human rights legislation and housing legislation;
2. in keeping with the Special Rapporteur's 2007 recommendation, the Government of Canada, in collaboration with provinces, territories and Indigenous leadership, should implement a comprehensive national housing strategy, that particularly targets the most marginalized groups such as women, Indigenous Peoples, elders, youth, and racialized communities;
3. in line with the CESCR's 2006 recommendations, the housing strategy should include measurable goals and timetables, a monitoring body and a complaints mechanism, encompassing social housing programmes for those in need, improved enforcement of anti-discrimination legislation in the field of housing, shelter allowances and social assistance rates set at realistic levels to cover the actual cost of housing, and adequate support services for persons with disabilities;
4. security of Tenure legislation throughout Canada should ensure that evictions are not carried out without ensuring that alternative housing options are available; and
5. access to health care and support for homeless people should be improved.

A Copy of the NGO Briefing Document submitted to the Working Group for the Universal Periodic Review is attached and marked as Exhibit Y to this Affidavit.

91. In advance of Canada's UPR before the UN Human Rights Council, CERA attended a meeting of states' delegates to the Human Rights Council in order to outline to them the priority concerns of NGOs. Subsequently, a number of the issues highlighted in the NGO Briefing Document were raised during the review of Canada, including issues of homelessness. Among the recommendations was that the Government of Canada consider taking on board the recommendations of the Special Rapporteur on Adequate Housing from his mission to Canada and that the Government "intensify the efforts already undertaken to better ensure the right to adequate housing, especially for vulnerable groups and low-income families."¹⁹ In its response to the UPR, Canada agreed to accept these recommendations with respect to housing and homelessness. A copy of the UPR report is attached and marked as Exhibit Z to this Affidavit.

92. In 2009 CERA collaborated with UN-HABITAT – a specialized agency of the United Nations dealing with issues of housing and homeless – to develop a preliminary assessment of whether, and to what extent, Indigenous peoples enjoy the right to adequate housing in different regions of the world. The publication includes seven case studies on the status of housing for Indigenous peoples in different regions around the world – in practice and in law – and reviews policies and programmes aimed at addressing their disadvantage. It also includes a comprehensive set of recommendations on improving the housing and living conditions of Indigenous peoples, and calls for further attention to be given to this critical human rights

¹⁹ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada*, UN Human Rights Council OR, 11th Sess, UN Doc A/HRC/11/17, (2009), para 72.

concern. As part of this collaborative project, CERA also assisted in the development of a policy guide for national and local governments on the implementation of the right to adequate housing for Indigenous peoples. The report concluded that the right to adequate housing means “that governments have a duty to take immediate steps to ensure that particularly vulnerable populations have access to the housing they need. This applies to indigenous peoples, and particular groups of indigenous peoples such as indigenous women leaving abusive households, those who are homeless and those who are disabled.” The report then recommended that the government take positive action to implement laws, policies and programmes that legally protect the housing rights of women, including indigenous women. A copy of the UN-HABITAT report is attached and marked as Exhibit AA to this Affidavit.

E. CERA’s Role as a Co-Applicant

93. As noted above, CERA has had considerable experience with test case litigation addressing broader systemic patterns of discrimination or policies leading to poverty or homelessness. This experience has led CERA to recognize the importance of ensuring that wherever possible in litigation of this sort, it is best to have a group of rights claimants brought together in a single action and joined with an organization with a broader accountability to the groups whose interest is at stake in the litigation. For a number of reasons, this has proven to be the best model both in litigation in Canada and in litigation in which CERA has been involved in other countries.

94. CERA tries to ensure that where possible, individuals with lived experience of poverty and homelessness are centrally placed as rights claimants in test case litigation, rather than relying solely on a group with a direct interest in the issue. Ensuring that courts are presented with claims that are grounded as much as possible in the context of individual circumstances and facts is helpful in ensuring that courts are presented with the reality of homelessness and poverty, with all of its personal and human dimensions. On the other hand, those who have experienced homelessness or are at serious risk of homelessness are usually not in a position to sustain test case litigation lasting many years. Media attention and the difficulties in navigating the foreign terrain of the justice system make the process of advancing *Charter* claims on poverty and homelessness fraught with risks to dignity and even security, particularly in light of the prevalent hostility toward those who are homeless. Some of the individual applicants in the present case have already experienced the kind of public hostility to which those living in poverty or homelessness are vulnerable in cases like this.

95. Moreover, circumstances often change, so it is difficult to be certain that a claimant who is in a position to launch a *Charter* application at one time will necessarily be in a position to continue with it years down the road. In other cases, changed circumstances may give rise to concerns with mootness or perhaps create a basis for an individual settlement. This may mean that the broader public interest in achieving meaningful remedies for the groups whose interest is at stake in the litigation would not be addressed, even after considerable expenditure of resources on the case

precisely because of its public interest dimensions. Advancing test case litigation of the sort involved in the present application involves significant public expense as well as expenses and vast amounts of volunteer time from experts, lawyers, legal workers and volunteers. In the present case, CERA has received some test case funding from Legal Aid Ontario on the basis that the case is seen as having a potential benefit for low-income people across Ontario – an interest extending beyond the individual applicants involved.

96. CERA believes that it is important to ensure, when possible, that when scarce resources are put into an important test case initiative, a group with an interest in the case is joined with a group of individual applicants. Having an organization involved as an applicant provides support for individuals who may otherwise feel isolated, provides access to some additional funding and resources, ensures broader accountability to the constituencies whose interests are at stake in the case and addresses the concern that public resources which are put into the case are not wasted if the circumstances of individual applicants change. It is for these reasons that CERA has chosen to join the individual applicants in this case and to assert its direct interest in the violations of the rights of its members, clients and groups served, as well as in the remedy that is being sought.

97. CERA's approach has been informed by the many examples in Canada and in other countries of similar *Charter* or constitutional test case litigation in which groups have been joined with one or more individuals to ensure continuity, effective use of

community and judicial resources and accountability to constituencies whose interest is at stake. Two well-known examples in Canada are the *Vriend v Alberta*, [1998] 1 SCR 493 case, in which an individual joined with three organizations with an interest in equality for gays and lesbians, and more recently, the *Insite* case (*Canada (Attorney General) v PHS Community Services*, 2011 SCC 44) from Vancouver, in which two affected individuals were joined in their *Charter* application by two organizations, one of which operated the facility and the other of which advocated on behalf of drug users. Having had a number of experiences in which significant resources were put into potential test cases that were unable to proceed because of the vulnerable or changing circumstances of individual applicants, CERA has adopted the model of these and other test case initiatives in the present case.

F. Conclusion

98. The impact of homelessness and inadequate housing on the lives of low income and vulnerable Ontarians includes reduced life expectancy, hunger, increased and significant damage to physical, mental and emotional health and, in some cases, death. The failure of the government of Canada and government of Ontario to effectively address the problems of homelessness and of inadequate housing among CERA's clients and the groups it serves is without question a serious issue that requires urgent attention.

99. CERA is the only organization in Canada whose mandate is to promote and enforce human rights so as to prevent the most marginalized groups from becoming homeless or living in inadequate housing. CERA's multi-level approach to advocacy is also unique: few organizations have the advantage of working directly with individual clients while advocating provincially, nationally and internationally – literally from the ground up to the United Nations. Because of this, CERA has a unique experience of homelessness and inadequate housing that spans from the individual to the systemic, recognizing the need for particular remedies to particular cases and broader remedies to address the systemic barriers to adequate housing that affect disadvantaged groups.

100. In CERA's experience, there are serious impediments to individual rights claimants successfully litigating claims addressing broad systemic issues such as homelessness. Our experience has taught us that individual applicants should be joined in test case litigation by organizations such as CERA with a direct interest in the issues. CERA is well known throughout Ontario and Canada as an organization that represents and understands the housing experiences of vulnerable and disadvantaged populations. CERA's involvement in this case as an applicant will, therefore, ensure that the experiences of low-income and vulnerable groups are effectively represented and that an organizational applicant will provide continuity and stability to ensure that the resources put into the case as public interest litigation are not wasted.

101. CERA has extensive knowledge of the barriers experienced by low-income and vulnerable people in Ontario and throughout Canada in their search for adequate, affordable housing and the problems that lead to eviction and homelessness. Urgent action needs to be taken by all levels of government to develop comprehensive national and provincial housing strategies to address the violations of the fundamental rights to personal security and equality which are the results of current policies and continued government failures to implement effective housing strategies. CERA has a direct interest in the remedy being sought in this case.

102. I affirm this affidavit in order to provide evidence on the application herein and for no other or improper purpose.

AFFIRMED BEFORE ME at)
)
the City of Ottawa, in the Province of) _____
) **LEILANI FARHA**
Ontario, this ___ day of _____ 2011.)

List of Exhibits

Exhibit A: Leilani Farha's *curriculum vitae*.

Exhibit B: CERA's articles of incorporation.

Exhibit C: Centre for Equality Rights in Accommodation, *Women and Housing in Canada: Barriers to Equality* (Toronto: Centre for Equality Rights in Accommodation, 2002).

Exhibit D: Centre for Equality Rights in Accommodation, "*Sorry it's rented*": *Measuring Discrimination in Toronto's Rental Housing Market* (Toronto/Ottawa: Centre for Equality Rights in Accommodation, 2009).

Exhibit E: Ontario Human Rights Commission, *Right at Home: Report on the consultation on human rights and rental housing in Ontario* (Toronto: Queen's Printer for Ontario, 2008).

Exhibit F: Margaret Philip, "Poor? Coloured? Then It's No Vacancy", *The Globe and Mail* (July 18, 2000).

Exhibit G: Centre for Equality Rights in Accommodation, "Human Rights, Access, and Equity: CERA's Recommendations to the Homelessness Action Task Force" (November 1998).

Exhibit H: "The Golden Report": Final Report of the Mayor's Homelessness Action Task Force (1999).

Exhibit I: "A Crisis Denied: Homelessness and Inadequate Housing in Canada", WHEN's submission to the United Nations Human Rights Council for the Universal Periodic Review of Canada. (Ottawa: Women's Housing Equality Network, 2009).

Exhibit J: Private Member's Bill C-304, *The Secure, Adequate, Accessible and Affordable Housing Act* (Ottawa: House of Commons, 2011).

Exhibit K: CERA's Submission to the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (2009)

Exhibit L: House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Federal Poverty Reduction Plan: Working in Partnership Towards Reducing Poverty in Canada* (November 2010) (Chair: Candice Hoepfner).

Exhibit M: CERA's Submission, *Proceedings of the Standing Senate Committee on Human Rights*, 40th Parl, 2nd Sess, No 3 (30 March 2009) (Chair: The Honourable A. Raynell Andreychuk).

Exhibit N: CERA's Submission, *Sub Committee on International Human Rights of The Standing Committee on Foreign Affairs and International Development*, 40th Parl, 3rd Sess, No 5 (1 April, 2010) (Chair: Scott Reid) at 3.

Exhibit O: Bill 140- *Strong Communities through Affordable Housing Act*, SO 2011, c 6.

Exhibit P: CERA's Submission to the *Standing Committee on Justice Policy- Ontario*, Legislative Assembly, *Official Report of Debates (Hansard)* 39th Parl, 2nd Sess, (24 March 2011

Exhibit Q: Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada, 19th Sess, UN Doc E/C.12/1/Add.31, (1998).

Exhibit R: United Nations Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee, Canada, UNHRCOR, 65th Sess, UN Doc CCPR/C/79/Add.105, (1999).

Exhibit S: CERA submission to the United Nations Committee on Economic, Social and Cultural Rights in Connection with the Considerations of the Fourth and Fifth Periodic Reports of Canada, (31 March, 2006)- see particularly submissions at pages 10 and 71.

Exhibit T: Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada, 36th Sess, UN DocE/C.12/CAN/CO/5, (2006).

Exhibit U: CERA Submission to the United Nations Human Rights Committee, Fifth Periodic Review of Canada, (17 October 2005).

Exhibit V: Human Rights Committee (HRC), Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant Concluding Observations of the Human Rights Committee: Canada, 85th Sess, UN Doc CCPR/C/CAN/CO/5, (2006).

Exhibit W: 2008 CERA/FAFIA submissions to the CEDAW Committee, “Women’s Inequality in Canada: Submission of the Canadian Feminist Alliance for International Action to the United Nations Committee on the Elimination of Discrimination Against Women on the Occasion of the Committee’s Review of Canada’s 6th & 7th Reports (September 2008)- see particularly “Women and Housing” and “Housing and Women’s Shelters” at page 91 and 97 respectively.

Exhibit X: Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Canada, 42nd Sess, UN Doc CEDAW/C/CAN/CO/7, (2008).

Exhibit Y: NGO Coalition Briefing Document, “The Universal Periodic Review of Canada: February 2009: An Overview of a Select Number Canadian NGO Concerns and Recommendations” (31 January 2009).

Exhibit Z: United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada*, UN Human Rights Council OR, 11th Sess, UN Doc A/HRC/11/17, (2009)

Exhibit AA: UN-HABITAT, “Housing Indigenous Peoples in Cities: Policy Guide to Housing Indigenous Peoples in Cities” (September 2009).