

Questions on the Way to the Right to Housing

An Ideas Paper

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INTRODUCTION

Canadians have been urging their governments to recognize housing as a human right for over a decade. Submissions, petitions, meetings and marches have come from all parts of the country demanding a fundamental change in the way our policies and laws look at how people get and keep a home. When governments refused to act, victims of the housing crisis went to Court to seek the protection of this right in the guarantee of “security of the person” in our Charter of Rights and Freedoms.

They pointed to Canada’s commitment in international treaties¹ in support of their case. But at the governments’ urging, the Court ruled that “...whatever international treaties may say about housing as a right is not of much help” and refused to hear the case.² The United Nations body that oversees these treaties did not agree.³ They were concerned that those affected by Canada’s violation of the right to housing – “disadvantaged and marginalized groups and individuals, including homeless persons, indigenous peoples and persons with disabilities” - were being left out by our legal and political system. Their Committee on Economic, Social and Cultural Rights recommended that Canada “**take the necessary legislative measures to give full effect to the Covenant rights in its legal order, and ensure that victims have access to effective remedies**”.

In its Discussion Paper, “A Human Rights-Based Approach to Housing” the Government of Canada appears to have heeded this call. The paper repeatedly refers to the International Covenant, and to “adequate” housing as a human right. The paper points out that implementation of a National Housing Strategy is fundamental to making that right a reality. It sets out program commitments on a number of fronts, which will provide the funding and the rules for getting housing built. And it sets out some ideas for new legislation that will promote a rights-based approach.

¹ United Nations Office of the High Commissioner on Human Rights, *Covenant on Economic, Social and Cultural Rights* www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

² *Tanudjaja v. Attorney General (Canada)* (Application), 2013 ONSC 5410 (CanLII), <http://canlii.ca/t/g0jbc>

³ Committee on Economic, Social and Cultural Rights Concluding observations on the sixth periodic report of Canada (March 2016) <https://www.cwp-csp.ca/resources/sites/default/files/resources/Committee%20on%20Economic%2C%20Social%20and%20Cultural%20Rights%20Concluding%20Observations.pdf>

In this Ideas Paper, ACTO sets out some ideas on what the “legislative measures to give full effect to the Covenant rights” would look like, and asks a number of questions about how we would get there.

WHAT IS INCLUDED IN A RIGHT TO HOUSING?

In agreeing to the International Covenant, Canada agreed to “recognise the right of everyone to an adequate standard of living ... including adequate food, clothing and housing...” So what is “adequate housing”?

The UN Committee has recognized seven factors that should be considered⁴:

- Legal protection against forced eviction, harassment and other threats
- Sustainable access to safe drinking water, home energy, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency service
- Cost of housing must not threaten or compromise the meeting of other basic needs and should recognize the variety of income levels
- The physical safety of occupants must be guaranteed and the housing must provide them adequate space and protection from adverse weather conditions or other threats to health and structural hazards
- Housing must be accessible so that vulnerable groups such as the elderly, children, people with disabilities or illnesses and victims of disasters have priority consideration
- Location that allows access to employment, health care, schools and other social facilities
- Cultural identity and housing diversity must be supported in policies about housing construction and materials

Do these factors define “adequacy” as we understand it in Canada?

Are there other factors that make up adequate housing?

Do these factors need to be written down in the new legislation?

⁴ CESCR General Comment No. 4: the Right to Adequate Housing
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

ACCOUNTABILITY AND ACCESS TO EFFECTIVE REMEDIES

As well as defining what is included in housing rights, a law that promotes a human rights-based approach to housing must provide for enforcement of those rights. The UN Committee saw, from the Court's abrupt dismissal of the Charter claim about housing rights, that Canada's laws did not provide effective remedies. There is no way for groups or individuals affected by violations of the human right to housing to address those violations. As well, there is no means in place to prevent those violations from occurring. The Government of Canada's commitment to new legislation that promotes a human rights-based approach to housing creates the opportunity to fix this.

Pro-active Government Measures

Core principles of a human rights-based approach to housing include accountability and prioritizing those most in need. This approach must be applied consistently across government decision-making. The right to housing Charter challenge was launched to address this very issue, particularly government inaction on housing and the significant budgetary cuts that contributed to the affordable housing crisis.

In 2016, the government embarked on decision-making with a gender lens⁵, primarily in their annual budget. A government-wide gender-based analysis involves examining the government's decisions and assessing the impact it will have on women. A similar housing rights-based analysis could be applied to government decision-making in accordance with NHS's core principles. In order to break down bureaucratic silos and recognize that housing is affected by a variety of decisions and is a solution for many issues, this analysis could be implemented government-wide or made mandatory for certain departments or agencies.

⁵ "Gender-Based Analysis Plus (GBA+) is the process by which a policy, program, initiative or service can be examined for its impacts on various groups of women and men. GBA+ provides a snapshot that captures the realities of women and men affected by a particular issue at a specific time ... GBA+ aligns with the principles outlined in the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act, and the Government of Canada is committed to supporting the full implementation of GBA+ across federal departments and agencies".

Departments or agencies provide evidence that GBA+ considerations have been taken into account and report relevant findings in Treasury Board submissions. If there are gender or diversity concerns, the submissions are reviewed and challenged by a program analyst at the Treasury Board based on their stated expectations.

Source: <https://www.canada.ca/en/treasury-board-secretariat/services/treasury-board-submissions/gender-based-analysis-plus.html>

What government actions would be subject to this obligation?

What duty would there be on government to take positive action on housing rights?

How would these measures interact with other oversight/enforcement bodies?

How would the government's compliance with these obligations be brought to the attention of the public to ensure accountability?

Is a report to Parliament every three years adequate to ensure accountability?

Remedies for victims of violations of housing rights

The new legislation must take as its starting point the right to equality and require non-discrimination in its application, in keeping with the Charter values that underpin all our laws. Therefore housing rights are held by everyone living in Canada and cannot be restricted, for example, only to those who are citizens. These over-arching principles would give guidance to the bodies charged with ensuring government accountability for compliance with the human rights-based approach. Equally important is that these oversight bodies provide for meaningful participation of affected groups and individuals. This participation is directed at ensuring that the methods by which violations of these rights are addressed are effective. These methods must permit groups and individuals to identify and seek remedies from bodies that are actually accessible to those claiming these rights. This would suggest that the court system is not the appropriate place for seeking and delivering these remedies.

The Discussion Paper proposes two new bodies to provide oversight and accountability to the government's efforts to recognize and realize housing as a human right. First there is the Federal Housing Advocate. While its proposed focus on those who are in the greatest need is welcome, it is difficult to see how "provid[ing] advice to CMHC" and engaging in an "ongoing dialogue with those in greatest need" will assist in ensuring effective redress for people in Canada who suffer from violations of that right. An advocate is needed that will seek out, receive and pursue the correction of rights violations. This body must be able to provide advocacy in a forum where effective remedies are available and take concrete actions toward correcting failures in housing policy.

That forum could be the National Housing Council. While it is proposed to create this body to "promote participation" and "support CMHC" in the development of Canada's housing policies, Canada could get much closer to the progressive realization of the human right to housing if this body was granted enforcement powers by the legislation. Such powers could include hearing complaints of systemic violations and issuing directions that provide solutions to violations within existing legislation and budgets or bringing these violations to the public's attention. To be effective, such a body would have clear avenues to make recommendations to Parliament and provincial and

territorial legislatures where action by these bodies is required to give full effect to housing rights.

The Discussion Paper also proposes funding to local organizations with broad mandates to help tenants address housing problems. These organizations must surely have a role in assisting those who suffer from violations of housing rights to gain access to the remedies provided in law for these violations. They could involve people with lived experience in organizing and advocating for recognition of these rights in their communities.

What powers would the new legislation have to grant to accountability bodies to allow them to meet the goal of a human rights-based housing strategy?

How could the necessary independence of these bodies from government be guaranteed?

How could the proposed Housing Advocate be structured to meet the requirement of providing access to effective remedies?

Could the proposed National Housing Council, alone or in conjunction with the Housing Advocate, be structured to provide effective oversight of government action and adequate remedies for victims of violations of housing rights?

What role can community-based tenant organizations play in providing this oversight and assisting victims?

What arrangements are necessary to provide oversight and direction to provincial and territorial governments where action is required of them?

What is the role of the Courts in providing jurisdictional oversight to bodies providing these remedies and how can this role be expressed in the new legislation?

Like many of our allies who advocate for housing rights, ACTO has struggled with the questions posed in this paper for years. While some of us believe we have the answers to these questions, bringing these ideas into enforceable laws will require more discussion and consensus-building. The Government of Canada is now willing to engage in this discussion with us on an urgent basis. This is an opportunity that should not be lost.

We urge everyone involved in the fight for the right to housing to engage in this discussion. We ask you to bring forward concrete ideas, an open mind and a commitment to more hard work so we can achieve the recognition of this right and, ultimately, the realization of this right for everyone in Canada.