

“Housed with Dignity”

**A Submission to the public consultation on a
human rights-based approach to housing**

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INTRODUCTION

The Supreme Court of Canada described dignity as a person’s or a group’s sense of self-worth and self-respect, their personal autonomy and self-determination; it is their physical and psychological integrity and empowerment. Dignity is harmed by unfair treatment premised on personal traits or circumstances. It is enhanced by laws that are sensitive to the needs, capacities and merits of different individuals which account for the context underlying their differences.¹ These observations have particular resonance when applied to laws and practices concerning housing rights. They remind us of the fundamental role that our housing conditions play in our sense of personal dignity and why we need a national housing policy that is based on human rights.

Canadians cannot wait any longer for government action on Canada’s housing crisis. Families should not live in fear of losing their homes; low-income youth should not couch-surf with friends; abused women should not remain with violent partners; Indigenous peoples should not live in deplorable conditions; people with disabilities should not live in buildings that are inaccessible. The time is now to give the Right to Housing real meaning and effect to change the trajectory of the affordable housing crisis in Canada.

As a signatory to the International Covenant on Social and Economic Rights, Canada committed to “recognise the right of *everyone* to an adequate standard of living... including adequate food, clothing and housing...” The 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”.

Enacting legislation that enshrines the obligations in the International Covenant will create an impetus for all levels of government, stakeholders, Indigenous peoples, people with lived experience and housing advocates to work together to end homelessness in Canada. It will create positive obligations on Canada, its provinces, territories and municipalities to proactively and aggressively reduce homelessness and

¹ Law v. Canada SCC 199 para 53
<https://www.canlii.org/en/ca/scc/doc/1999/1999canlii675/1999canlii675.html?searchUrlHash=AAAAQAHZGlnbml0eQAAAAAB&resultIndex=1>

precarious housing, protect and increase the supply of affordable and adequate housing and ultimately prevent people from becoming homeless. In short, it will allow everyone living in Canada to be housed with dignity.

In this paper, the Advocacy Centre for Tenants Ontario (ACTO) further develops the ideas and questions posed in our April 20, 2018 paper based on our discussions with stakeholders, participation in government consultations and our research. Our paper is focused on fundamental changes needed in current approaches, aiming to prevent homelessness and ensure the current crisis is resolved and not exacerbated. The following are ACTO's recommendations for the "legislative measures to give full effect to the Covenant rights".

A PARADIGM SHIFT - HUMAN RIGHTS OVER PROFITS

As Leilani Farha, the UN Special Rapporteur on Adequate Housing reminded us at the National Roundtable on May 28, approaching housing from a human rights perspective involves a significant paradigm shift. With the creation of the National Housing Strategy, the Government of Canada is making a commitment to the human right to be housed with dignity. This commitment places people and their communities above profits and will require that their rights be granted legal protections which have not historically been part of Canada's housing policy. This commitment means that social condition, including the source or level of one's income, will no longer be a bar to accessing adequate housing. We should not underestimate the magnitude of this change and the law must clearly and unequivocally reflect its importance.

At the same time, we are undergoing another paradigm shift in regard to treaty rights and reconciliation duties owed to Indigenous peoples. Canada's recent adoption of the United Nations Declaration on the Rights of Indigenous Peoples is our most prominent affirmation of that shift. Strategies and programs that support the housing rights of Indigenous peoples living in Canada must start with all the rights, benefits and privileges granted to non-Indigenous people, and must include additional measures that advance the implementation of this recognition.

This changed viewpoint will affect how we imagine the funding arrangements and the programs they support under our rights-based National Housing Strategy. Budget commitments must be made with a recognition that permanent needs require long-term funding with targets that support the progressive realization of the right to be housed with dignity. Programs to create new housing must be of sufficient scale and impact that reliance on old ways of meeting these needs will be supplanted, leaving behind the failures associated with these approaches. There must be greater reliance on not-for-

profit structures, where organizational goals are aligned with the precedence of human rights over competing rights. And where programs rely on private sector involvement to advance the realization of the right to housing, the conflicts that competing commercial rights create must be squarely faced. Rigorous conformance with the human rights framework must be required and monitored, including adherence to the principles of non-discrimination, protection of dignity and giving priority to those most in need.

As we detail below, the Government of Canada must, in advance of taking action including adoption of legislation and other instruments, evaluate their actions for the impact they will have on housing rights. The sectors that are federally regulated, including the financial services industries that impact the provision of housing, must meet requirements that promote a human rights-based approach to housing. And where violations of housing rights are occurring as a result of the actions and policies of provinces, territories and municipalities, federal bodies and federal financial supports must be used to confront these violations, either through positive measures or through sanctions.

WHAT IS INCLUDED IN A RIGHT TO HOUSING?

Components of the Right

In adopting the International Covenant, Canada agreed to “recognise the right of everyone to an adequate standard of living ... including adequate food, clothing and housing....”. The National Housing Strategy Discussion Paper recognizes this commitment as the basis of the human right to housing. The UN Committee on Social, Cultural and Economic Rights has enumerated seven factors that make up this right². These must be enshrined in law as the components of the right:

- 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
- The 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

² CESCR General Comment No. 4: the Right to Adequate Housing
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

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

Definition and elaboration of these factors will evolve as the Covenant is interpreted in domestic and international law.

Protection of the Marginalized

We believe that particular emphasis must be placed on the factor of accessibility to the vulnerable. A significant proportion of people with disabilities or illnesses are homeless or precariously housed, and their recognition as a priority group requires actions above and beyond those traditionally associated with housing. To realize their right to be housed with dignity, the legislation must ensure that the personal and accessibility supports that they require to live independently are fully integrated into housing plans. Furthermore, people in need of such housing supports must be part of the design and decision-making process. We are encouraged by the National Housing Strategy's setting of targets for new units to be created for seniors and people with developmental disabilities in the National Housing Co-Investment Funds, and we believe that this component should be enshrined as a permanent goal of the legislation.

Relationship to the Indigenous Housing Strategy

In May 2016, Canada finally adopted and pledged to implement the *UN Declaration on the Rights of Indigenous Peoples*.³ Articles 21 and 23 of that Declaration state that Indigenous peoples have the right to the improvement of their economic and social conditions including housing. As well, they have the right to be actively involved in developing and determining housing programs that affect them. Action is long overdue as Indigenous communities across Canada (including those in urban centres) are suffering in extremely poor housing conditions and are over-represented in homeless, hidden homeless and inadequate housing statistics.

³ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

We are concerned by the lack of information regarding the progress of the Indigenous Housing Strategy, despite the widespread acknowledgement that Indigenous peoples are a priority group. While including them in the general protections granted by the right to housing legislation, that legislation must do more. It must be centred on the Indigenous Definition of Homelessness and include a clear and strong commitment to address the Indigenous housing crisis without delay. ACTO also supports the recommendations made by the Ontario Federation of Indigenous Friendship Centres in their January 2018 submissions on the National Housing Strategy.⁴

ACCOUNTABILITY

A human rights-based approach to housing requires accountability of all levels of government in all areas of government decision-making that impact on the ability of all people living in Canada to attain housing with dignity. Tools for achieving this accountability have been developed in many areas where important paradigm shifts have occurred. These tools must be adapted to the realization of housing rights.

A rights-based lens is an example of a tool required, by law, to be used in significant areas of government decision-making that have the potential of affecting people's rights. Decisions are made and assessed based on their impacts on rights-holders, with an explanation clearly articulated as to how their rights were considered in making the decision. The objective of using a lens to enforce rights is to *prevent* bad decision-making that will exacerbate the housing crisis and undermine the Right to Housing. Lack of consideration of these impacts allowed the cuts in core funding and programs decades ago that have largely created the housing crisis of today.

At the Federal level, a prominent example is the “Gender-Based Analysis Plus” (GBA+)⁵, which the Government of Canada committed to fully implement across federal departments and agencies. This is a process by which a policy, program, initiative or service is examined for its impacts on diverse groups of women, men and gender-diverse people, providing a snapshot of the realities of different groups of women and men affected by a particular issue at a specific time. This approach aligns government action with higher principles, in the case of GBA+, those found in the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*. Departments or agencies must provide evidence that these considerations have been taken into account in all their actions and report relevant findings in their Treasury Board submissions. If there are gender or diversity concerns, the submissions are reviewed

⁴ <http://www.ofifc.org/sites/default/files/docs/2018-policy-housing-strategy%28WEB%29.pdf>

⁵ <http://www.swc-cfc.gc.ca/gba-acis/index-en.html>.

and challenged by a program analyst at the Treasury Board based on their stated expectations.⁶

In Ontario, the *Environmental Bill of Rights (EBR)* offers residents a robust method of transparency, accountability, participation and enforcement of their right to a healthy and sustainable environment. Prescribed ministries are required to apply an environmental lens to their proposals, which are posted on a public registry. The public has a right to participate and provide input before the decision is made. The ministry's final decision, which includes an explanation of how the comments impacted their decision, is posted on the registry. The Environmental Commissioner reviews these decisions in their annual report to the Legislature to ensure that decision-makers have adhered to their *EBR* responsibilities. The province is also applying human-rights and accessibility-rights lenses to government programs, policies and infrastructure to ensure that goods and services are provided in non-discriminatory manner.

A process that requires similar analysis of government decision-making can be focussed on the goal of achieving the human right to housing with dignity. Such a process must be made mandatory for certain departments or agencies that affect the creation of housing or rely on the provision of housing so that bureaucratic silos are broken down. This process would recognize that housing is affected by a variety of decisions and is a solution for many issues⁷.

This housing analysis would assess how a decision will impact the goals of the National Housing Strategy and the integrity of the right to housing. Questions that should be asked could include:

- Whose housing will be impacted and who is left out?
- How will detrimental housing impacts of a decision be mitigated?
- What benefits will be obtained by having housing in place?
- Was there appropriate stakeholder and rights-holder input?
- How does this decision relate to past housing decisions?

The responses must be reported publicly and deficiencies addressed promptly. Overseeing government compliance with their housing lens analysis could be an important role for the Advocate's office. Clearly there are certain decisions that are, on their face, violations of the right to housing and will trigger more robust scrutiny – those that result in forced or mass evictions; austerity budgets where social programs and

⁶ Treasury Board GBA+ process: <https://www.canada.ca/en/treasury-board-secretariat/services/treasury-board-submissions/gender-based-analysis-plus.html>;

⁷ Examples include but not limited to: Finance, Infrastructure, Canadian Mortgage and Housing Corporation, Families, Children and Social Development, Canada Revenue Agency, Indigenous Affairs, Health Canada, Public Works and Intergovernmental Affairs

housing are significantly cut; transactions that result in a significant reduction of affordable rental housing stock. We would expect that the paradigm shift, of which this analysis is a part, would make such decisions rare anomalies.

To facilitate meaningful consultation, government proposals that have a connection to housing could be posted on an online registry of housing decisions, modelled on the *EBR* registry⁸, overseen by the Housing Advocate. The public would be able to access the proposals and comment on them. These Government departments and agencies would be required to create a Housing Values Statement that outlines their commitment to a housing rights approach in any of their work that intersects with housing policy. The housing lens would normally be applied to laws, regulations, policies and budgets, but there may be other decisions which would benefit from this process as well.

This process could be supplemented by legislating the ability of groups or individuals to file applications for review/investigation of government action impacting the National Housing Strategy or the right to housing. This is another feature of the *EBR* where it can be triggered by a party's belief that a legal instrument or regulation or someone's conduct is negatively impacting the environment. The Environmental Commissioner oversees the application process and reports on the findings in their report. An analogous process could be implemented through the Housing Advocate.

ACCESS TO REMEDIES FOR VIOLATIONS

Although we want the focus of housing rights to be on proactive prevention of violations and the progressive realization of Canada's commitments, a law that promotes a human rights-based approach to housing must provide for ways to address failures in these areas. At this point in the evolution of *Charter* law, it is clear that such remedies are not available through the Courts for groups or individuals affected by violations of the human right to be housed with dignity. This may change over time as the role of housing rights in protecting security of the person and advancing equality rights becomes more widely accepted. For the present, a number of detailed proposals have been advanced suggesting ways in which this gap can be filled by new legislative measures.

At this time, we do not know if there is a real commitment by the Government of Canada to the investment of funds and other preventative measures that could accomplish the paradigm shift required to implement an approach to housing that is based on human rights. As a result, ACTO is unable to set out a definitive model of a system to respond to violations of those rights. However, we have some very clear requirements of legislation providing for such a responsive system:

⁸ <https://www.ebr.gov.on.ca/ERS-WEB-External/>

- **non-discrimination in its application**; the benefits of the rights-based approach must flow to everyone in Canada and cannot be restricted, for example, only to citizens.

- **meaningful participation of affected groups and individuals**; those claiming rights must be able to air their grievances in an accessible public forum and people with lived experience must be able to participate in investigation and policy-making functions as equal partners with those with legal and administrative expertise.

- **an independent advocacy role**; a properly-resourced office is needed, insulated from political and administrative pressures, that can gather information on housing conditions and speak out in media, legislative and other public forums to advance the correction of rights violations in a systemic manner.

- **clear pathways to Parliament and provincial/territorial legislatures**; elected representatives must be empowered in law to receive advice and information directly from those charged with advancing the housing strategy, without executive or administrative barriers. This access must be available in a timely manner, including annual reporting and interim access when conditions warrant.

- **a broad mandate for funding of local tenant organizations**; these groups must have the capacity to involve people with lived experience in organizing and advocating for recognition of housing rights and to take action on barriers to the realization of these rights in their communities and beyond. These groups would play an important role in ensuring accountability and securing remedies to violations.

- **a role for the Courts in providing jurisdictional oversight and ensuring the evolution of the *Charter* in addressing housing rights**; the rights being implemented in this legislation support and build on the *Charter* values of security of the person and equality without discrimination. It must be clear that the role of the Courts is to advance these values and to protect the powers granted under this law so as to attain the positive outcomes for Canada that a right to be housed with dignity will achieve.

We note that Canada continues to be obligated to report its progress on the realization of the right to housing to the UN Committee on Economic, Social and Cultural Rights as part of the periodic review system established under the international covenant (ICRSCR). Canada has undertaken further responsibilities in this regard by the commitments it has made under the 2030 Agenda for Sustainable Development. While these commitments to other UN Members cannot take the place of effective enforcement of rights by bodies in Canada, we must remain mindful of the importance to Canada of its standing in the international community.

CONCLUSION

Being adequately housed involves a lot more than having a roof over one's head. We urge the government to keep in mind the real-world goal of a human rights-based approach to housing – the realization of everyone's right to be housed with dignity. We know that current policies have failed to achieve that goal and caused much unnecessary suffering by failing to make human needs our priority. We believe that expressing these needs as enforceable rights in law provides us with a path to overcoming the entrenched ways of making decisions which have caused these failures. While we believe that it will take a major paradigm shift to do that, we know that paradigm shifts can occur where there is the political will to create them. The people of Canada have spoken up in favour of this change and we urge you to strongly recommend to Parliament that they use the legislative tools at their disposal to answer that call.