



Centre for Equality Rights in Accommodation
Centre pour les droits à l'égalité au logement

Submission to the Government of Canada, “Let’s Talk Housing” consultation on Canada’s National Housing Strategy

Office of the Hon. Jean-Yves Duclos, P.C., M.P.
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Who is CERA?

The Centre for Equality Rights in Accommodation (“CERA”) is an incorporated non-profit organization with registered charitable status that promotes human rights in housing accommodation for vulnerable and disadvantaged groups. Our organization is based in Ontario; however, we have a long history of promoting human rights in housing in Canada and internationally. We are the only organization in Canada primarily dedicated to promoting human rights in housing, eliminating housing discrimination, and ensuring the right to adequate housing is respected and recognized.

CERA works to remove the barriers that keep disadvantaged individuals and families from accessing and retaining the housing they need. We defend housing rights and human rights by educating individuals and communities, advancing progressive and inclusive housing law and policy, and providing legal information and services to vulnerable and marginalized tenants.

CERA undertakes the following activities to achieve its vision of an Ontario where every person realizes their housing rights, is treated with dignity, and lives free from discrimination in a stable, safe and affordable home:

- assisting individuals, households or groups facing discrimination in relation to access to or occupancy of housing;
- assisting those facing eviction from housing;
- conducting research into issues of housing policy or practices which may lead to homelessness;
- identifying and attempting to address systemic barriers to accessing adequate housing faced by vulnerable or disadvantaged groups;
- conducting research and public education on issues of human rights in housing, housing policy and practices affecting access to adequate housing or ability to remain in existing housing;
- assisting governments and policy-makers in identifying causes of and solutions to homelessness or inadequate housing;
- 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;
- 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
- 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.

The Housing and Homelessness Crisis in Canada

Canada is one of the wealthiest industrialized nations in the world, yet poverty persists throughout the country. Almost five million people in Canada live in poverty, including 1.34 million children.¹ Children, single mothers, Indigenous people, racialized groups, and people living with disabilities experience higher rates of poverty than the average and often have the fewest resources to address discriminatory barriers.

Homelessness and poor housing conditions for low-income Canadians have been recognized as a national crisis. A 2014 study estimated that 235,000 Canadians experience homelessness each year, with over 35,000 people experiencing homelessness on any given night.² This figure refers only to street homelessness, and does not include the vast number of “hidden homeless” and precariously housed Canadians.

A common measure of affordability used in Canada refers to total shelter costs as a proportion of total household income. Housing is often considered affordable if shelter costs account for less than thirty per cent of before-tax household income. About forty percent of rental households pay more than thirty percent of their income on housing, with low-income Canadians paying an even higher percentage of their income on shelter costs.³

Despite the growing problems of homelessness and lack of affordability, previous governments have failed to take meaningful action to address these problems. Rents continue to rise, social assistance rates continue to fall, and there continues to be a significant shortage of social housing in Canada. Since 1990, Canada’s population has increased by almost thirty percent; however, the government’s annual investment in housing has decreased by over forty-six percent. These reduced investments have resulted in fewer, and less effective, housing programs.⁴ The number of social housing units built by the federal government has drastically decreased in recent decades. In 1982, 20,450 new social housing units were built annually. By 2006, that figure had been reduced to only 4,393.

The Consultation Process

CERA is very pleased that the federal government is engaging in a consultation process regarding the development of a National Housing Strategy. It provides is an

¹ Statistics Canada. Table 111-0015-Family characteristics, Low-Income Measures (LIM), by family type and family type composition, annual, CANSIM.

² Stephen Gaetz, Tanya Gulliver and Tim Richter, *The State of Homelessness in Canada 2014* (Toronto: The Homeless Hub Press, 2014) at 5.

³ Gaetz at 23.

⁴ Gaetz at 4.

exciting opportunity for the government to talk to real Canadians about the importance of a robust, human rights-based strategy that will address their actual housing needs. However, despite this excitement, we have some concerns regarding the design and implementation of the consultation process. We hope that our submissions on this point will be taken into consideration as the government continues to consult Canadians as it designs, implements, and evaluates the strategy.

Lack of Awareness of the Consultation Process

The “Let’s Talk Housing” consultation has not been widely promoted and publicized. Many people in civil society, and in particular, those people with lived experience of homelessness and precarious housing, are unaware of the consultation and do not know how to participate. Even some social service agencies that serve homeless and precariously housed Canadians are unaware of the consultation process. We are concerned that this lack of awareness will mean that the government will not hear from a diverse array of voices, and most importantly, will not hear from those people most affected by the housing crisis in Canada.

Expert Roundtable Discussions

Our Executive Director was pleased to participate in the expert roundtables held in September 2016. The information and expertise shared during these roundtable discussions will be invaluable to the development of an effective and responsive National Housing Strategy. We were particularly excited to take part in the session “Furthering the progressive realization of the right to housing through a National Housing Strategy.” We were very pleased to see CMHC and the federal government recognize the importance of advancing the right to adequate housing in the National Housing Strategy. However, we were disappointed that this session was not held earlier in the roundtable discussions. Given the importance of the making the conceptual shift to view housing as a human right, and not merely as a commodity or need, it would have been most useful to open the consultation session with this discussion and frame the remaining sessions in a rights-based approach. Further, we are concerned that the expert roundtables did not reflect the diversity of our country and did not include a strong presence of experts with lived experience of homelessness, nor Indigenous leaders.

Online Survey

While the online survey provides a relatively easy method for many Canadians to participate in the consultation process, homeless and low-income individuals may have difficulty participating in this way. Often, homeless and low-income Canadians may not have reliable access to the Internet. We have serious concerns that a failure to consult the general public using methods other than the online survey, will mean that many people who are deeply affected by the housing crisis in Canada will not have the opportunity to provide their expertise and recommendations to the

government. Further, the survey questions do not explore many important issues (including the impact of poverty) on housing affordability and the housing crisis.

Need for Ongoing Consultation

Although this consultation process is coming to a close in November 2016, we encourage the government to continue meaningful consultation with Canadians, and those with lived experience of homelessness and precarious housing in particular. This continued feedback will be imperative as the government develops, implements, and evaluates the National Housing Strategy. The Right to Housing Coalition, a group of community activists, Indigenous groups, lawyers, academics, social service providers, and people with lived experience of homelessness and precarious housing, submitted a model of consultation to CMHC and the federal government in early 2016. This model was based in part on the successful Canadian Mental Health Commission process. We encourage the government to consider this submission and its recommendations as it plans further consultation processes regarding the strategy.

The Importance of a Rights-Based Approach

The right to adequate housing is protected in several international instruments including the United Nations' International Covenant on Economic, Social and Cultural Rights (Article 11), the Universal Declaration of Human Rights (Article 25 (1)), the Convention on the Rights of the Child (Article 16 and 27), the Convention on the Rights of Persons with Disabilities (Article 9 and 28), and the Convention on the Elimination of All Forms of Discrimination against Women (Article 14 and 15). Domestic law in Canada does not formally recognize the right to adequate housing, however, Canada has signed on and ratified several international human rights treaties that protect the right to adequate housing, including the Covenant on Economic, Social and Cultural Rights. This creates real obligations on all levels of governments (including federal, provincial and municipal) to protect Canadians' rights.

International law defines adequate housing as the right of every person to gain and sustain a safe and secure home and community in which to live in peace and dignity. Adequate housing includes not only the structure itself, but also considers affordability, location, access to employment and basic services, cultural appropriateness, habitability, security of tenure, and accessibility. A rights-based National Housing Strategy will ensure that each of these important elements is protected.

Canada has been heavily criticized by various international bodies of the United Nations for its failure to protect the right to adequate housing. In its review of Canada in 1998, 2006 and 2016, the Committee on Economic, Social and Cultural Rights, expressed concern about inadequate housing and homelessness amongst particular vulnerable groups. In 2006 the Committee recommended that "the federal, provincial and territorial governments address homelessness and inadequate housing as a national emergency by reinstating or increasing, where necessary, 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, and providing adequate support services for persons with disabilities.”⁵

There is a need for a conceptual shift in Canada to view housing not merely as a commodity or need to be met, but rather as a human right. Understanding housing in this way is critical. When a human right is not respected it is not merely a failing of the State, but rather it is a violation of a right that can be legally claimed. Addressing the housing crisis through a rights-based strategy will ensure the dignity of all Canadians.

As Dr. J. David Hulchanski notes in his affidavit in support of the applicants in *Tanudjaja v Canada et al.*, 2013 ONSC 5410:⁶

The notion of housing as a human right has become central to evolving solutions to homelessness in other countries. It reinstates a democratic accountability to the rights and needs of this vulnerable population and transforms the process of program design and policy into one which is focused on protecting human rights.

The precise contours of a housing strategy to end homelessness in Canada may vary. There are different policy options and ways of designing programs and allocating responsibilities. The critical factor, however, is the commitment to recognizing at both the federal and provincial levels that adequate housing is a right.

Canada must adopt a comprehensive National Housing Strategy based on the recognition of the right to adequate housing. Using a rights-based approach is necessary if Canada wishes to address its housing crisis in a meaningful way and protect its most vulnerable citizens.

Key Components of the National Housing Strategy

The National Housing Strategy must include the following components to ensure compliance with international human rights law and the recommendations of UN treaty bodies:

1. be based in human rights law, including the international right to adequate housing;
2. explicitly reference human rights and clearly establish the right to adequate housing in domestic law;
3. prioritize the needs of those groups most vulnerable to homelessness and inadequate housing;

⁵ Concluding Observations of the CESCR Committee, E/C.12/CAN/CO/4 E/C.12/CAN/CO/5, 2006 at 62.

⁶ Affidavit of Dr. J. David Hulchanski, *Tanudjaja v Canada et al.*, 2013 ONSC 5410 at 79, available here: <https://www.acto.ca/assets/files/cases/Afd.%20of%20J%20D%20HULCHANSKI,%20Associate%20Director%20for%20Research,%20Cities%20Centre,%20U%20of%20T%20-%20FINAL.pdf>

4. commit to the principle of non-discrimination and equality;
5. ensure meaningful participation of all affected groups (including Indigenous communities and those with lived experience of homelessness and precarious housing) in the design, implementation, monitoring, and evaluation of the strategy;
6. set enforceable targets, timelines and goals;
7. include accountability mechanisms, independent monitoring, and an individual complaints mechanism; and
8. be adequately resourced to achieve its goals.

The National Housing Strategy must also include mechanisms to improve social housing programs, provide adequate support services for vulnerable populations (including people with disabilities), and develop a targeted Indigenous housing strategy in consultation with Indigenous communities.

Many human rights groups and advocates, including the UN Special Rapporteur on Adequate Housing, have recognized the importance of a rights-based approach. In a 2009 report on his mission to Canada, the UN Special Rapporteur recommended 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.”⁷

The inclusion of measurable targets and timetables for the reduction and elimination of homelessness is a critical component of the National Housing Strategy. As recommended by UN Special Rapporteur on Adequate Housing in his 2007 Report to the Human Right Council, these indicators should include: i) simple, comprehensive indicators; ii) disaggregated data which allows for the monitoring of specific disadvantaged groups; and iii) explicit and precise indicators with clear methodology and publicly accessible reporting. Further, all the indicators should be developed in consultation with groups vulnerable to homelessness, including Indigenous communities.⁸

Designing and implementing a rights-based National Housing Strategy will require the government to consider how the right to adequate housing can be claimed, what mechanisms will be available to hear and adjudicate such claims, what remedies should be available to claimants, how outcomes can be evaluated and monitored, and what mechanisms will be in place when desired outcomes are not achieved.

CERA agrees with the Right to Housing Coalition’s submission to this consultation process that an effective, rights-based National Housing Strategy must take into

⁷ 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, 2009 at para. 90.

⁸ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living to the Human Rights Council, 2007.

account the diversity of housing needs across the country and among communities; it must be flexible and avoid one size fits all solutions. More specifically, CERA agrees with the Right to Housing Coalition's submission that a National Housing Strategy must include "strategies to address homelessness, ensure eviction prevention among vulnerable groups and people, and provide concrete supports to those in an immediate housing crisis" and that these strategies should include:

- A mixture of purpose-built truly affordable social housing and include adequate resources to ensure housing quality and sustainability;
- Defining "affordable" as rent that is no more than 30% of gross income;
- A form of rent supplements/housing allowances in private market housing units that result in truly affordable rents; and
- Solutions that address the long wait lists for social housing.⁹

Applying a Gendered Approach to the National Housing Strategy

The experience of homelessness is very different for men and women. As such, plans to address homelessness that recognize gender differences are far more successful than those that do not. In fact, plans that do not account for these differences may lead to even greater gender inequality.

The National Housing Strategy must be rooted in an equality rights framework, address the housing needs of women, and be integrated with existing policies aimed at addressing women's poverty. The government must ensure that the strategy is funded at a level that is sufficient to ensure the most disadvantaged groups of women in Canada are adequately housed. Further, the strategy must address the effects of colonialism and existing policies that disadvantage Indigenous women.

The Inadequacy of Social Assistance Rates

The housing affordability crisis is felt even more acutely by Canadians in receipt of social assistance. Social assistance rates continue to be inadequate to cover the cost of basic needs, including housing, heat, electricity, water and food. In particular, the shelter portions of social assistance allowances across Canada are woefully inadequate to cover the average rental costs in cities across the country. For example, in Ontario a single person receives \$661 a month, or \$8,172 annually.¹⁰ This amount includes \$376 that is to be used to cover shelter costs. However, the average rent for a one-bedroom apartment in Toronto, Ontario's capital city, is \$1,217 - nearly twice as much as a recipient's entire monthly allowance.¹¹

⁹ Right to Housing Coalition, Submission on the Right to Adequate Housing to the Government of Canada, "Let's Talk Housing" consultation to develop a National Housing Strategy at 10-12.

¹⁰ Income Support Advocacy Centre, "Social Assistance Rates and the OCB - October 1, 2015", available here:

http://yourlegalrights.on.ca/sites/all/files/OW_and_ODSP_rates_and_OCB_as_of_Oct-2015.pdf

¹¹ Rent Board, available here: https://www.rentboard.ca/rentals/rental_rates.aspx?locid=4893.

Although social assistance is administered by the provinces and territories, the federal government must take a leadership role to address the inadequacy of social assistance rates throughout the country. Despite the constitutional division of powers between the federal and provincial governments, Canada must meet its international human rights obligations with respect to the right to adequate housing.

The Link Between Adequate Housing and Health

The health risks of inadequate and unhealthy housing are well documented. A growing body of research points to the vital role that safe and healthy housing plays in positive health outcomes, including preventing and reducing chronic health conditions and supporting overall physical and mental wellbeing. Dr. Stephen Hwang, of the Department of Medicine, University of Toronto, notes, “homeless people are at increased risk of dying prematurely and suffer from a wide range of health problems.”¹² In providing expert evidence to the Supreme Court of British Columbia in *Victoria (City) v. Adams*, Dr. Hwang further provides that:

People who become homeless often have physical and mental health problems which worsen over the period that they are homeless. This deterioration in health is related to numerous factors, including a lack of stable housing, an adverse social environment, the near impossibility of maintaining health-promoting behaviours in the face of homelessness, and barriers to accessing appropriate health care. The state of being homeless also has direct adverse effects on health through an increased exposure to infectious and communicable diseases (e.g., tuberculosis and insect infestations such as bed bugs and scabies) and an increased risk of violence and victimization while living in shelters and on the street. For those living outside, exposure to the elements can lead to a number of serious and potentially life-threatening conditions. Homeless people are at risk for severe sunburn and heatstroke during the summer months. During cold weather, frostbite and hypothermia are major problems.¹³

Research suggests that individuals who have access to housing that protects them from the elements, provides privacy, provides access to sanitary facilities, is free of health and safety risks, and supports participation in the community have better health outcomes. These needs are met when an individual can access adequate housing on a permanent basis. While emergency shelters are crucial in a time of crisis, they cannot provide the above noted protections in the long term. The National Housing Strategy must address the need for permanent adequate housing in order to support positive health outcomes for all Canadians.

¹² Dr. Stephen Hwang, “Homelessness and Health” CMAJ January 23, 2001 vol. 164 no. 2

¹³ *Victoria (City) v. Adams*, 2008 BCSC 1363 at 67.

Summary

- Ongoing consultation will be necessary as Canada develops, implements, and evaluates the National Housing Strategy.
- Future consultation processes should:
 - be better publicized and promoted by the federal government,
 - include a variety of ways to provide feedback and make recommendations, and
 - prioritize gathering information from those most affected by the housing crisis, including people with lived experience of homelessness and precarious housing.
- There is a need for a conceptual shift in Canada to view housing not merely as a commodity or need to be met, but rather as a human right.
- Canada must adopt a comprehensive rights-based National Housing Strategy that clearly recognizes the right to adequate housing and includes the following components:
 - be based in international human rights law;
 - explicitly reference human rights and clearly establish the right to adequate housing in domestic law;
 - prioritize the needs of those groups most vulnerable to homelessness and inadequate housing;
 - commit to the principle of non-discrimination and equality;
 - ensure meaningful participation of all affected groups in the design, implementation, and monitoring of the strategy
 - set enforceable targets, timelines, and goals;
 - include accountability mechanisms, independent monitoring and an individual complaints mechanism; and
 - be adequately resourced to achieve its goals.
- The National Housing Strategy must apply a gendered approach and apply an equality-rights framework.
- The federal government must take a leadership role to address the inadequacy of social assistance rates throughout the country.
- The National Housing Strategy must address the need for permanent and adequate housing in order to support positive health outcomes for all Canadians.

Please note: CERA would like to thank Mr. Ramz Aziz, University of Toronto International Human Rights Program Fellow, for his valuable research in support of these submissions.