



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



A SOCIAL CHARTER FOR THE CITY

Produced by
the Social Rights Advocacy Centre and
the Centre for Equality Rights in Accommodation

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The **Centre for Equality Rights in Accommodation** (CERA), the **Social Rights Advocacy Centre** (SRAC) and other organizations have launched a campaign to convince the City of Toronto and other municipalities across Canada to adopt social charters to protect social rights such as the right to housing, to food, to health, to education, and to adequate income in all areas of municipal programs and decisions. We need your help. If you are willing to join the campaign, please email us at social_charter_for_the_city@equalityrights.org.

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THE CITY: THE NEW FRONTIER OF HUMAN RIGHTS ADVOCACY

Entrenching commitments to social and economic human rights, international human rights values, participatory governance and social inclusion at the municipal level is now emerging as a new frontier of municipal governance and a critical new dimension of the international human rights movement. Behind the new enthusiasm for city charters is the idea of bringing human rights from the global level down to the local level, and enabling individuals and communities to claim and enforce social rights in their everyday lives.

Municipal governments are in many cases more progressive forces for social justice and environmental reform. Cities have become a site for democratic reform at a time when provincial/territorial and national governments have become a far less accessible democratic influence. In addition, municipalities are critical actors in determining the extent to which social and economic human rights such as the right to housing, the right to food, the right to an adequate standard of living, the right to water and the right to health and education are realized in peoples' lives. They now play a central role in community development, affordable housing and social services and are responsible for many essential services such as water and sewage, garbage collection, electric utilities, public transit, maintenance of the local road network, and police and fire services, public health and childcare.

Initiatives have been taken throughout Europe¹, Latin America, Africa, Asia² and in several North American cities including Montreal³, San Francisco⁴ and New

¹ For an assessment of European initiatives, see Julia B. Braunegg, "Institutions for the Protection of Human Rights in the City: A Legal Assessment", online: <http://www.www.etc-graz.at/publikationen/INSTITUTIONS%20FOR%20THE%20PROTECTION%20OF%20HUMAN%20RIGHTS%20IN%20THE%20CITY.pdf> (June 2005) at 17.

² A draft Charter for the Right to the City has been widely debated among social movements in Latin America and organizations of Africa and Asia have developed demonstrations claiming the Right to the City. The proposed Charter for the Right to the City presented at the World Social Forum in Quito, Ecuador, available at <http://www.hic-net.org/articles.asp?PID=29>. UNESCO has recognized this proposal and has a working group to deepen the contents, concepts and implications of this emerging, collective right. One example of a city enacting social and economic rights is found in the Constitution of Buenos Aires, which protects the right to housing, health, education, work and social security and many other human rights.

York⁵ to establish human rights charters or to incorporate international human rights into municipal law.

WHAT'S THE SITUATION IN CANADA: CAN CITIES BE BOUND BY A SOCIAL CHARTER?

Municipalities and municipal agencies and delegated decision-makers are bound by provincial human rights legislation and by the *Canadian Charter of Rights and Freedoms*. Canada's obligations under international law to protect and ensure social and economic rights such as the right to food, housing, water, an adequate standard of living, education and healthcare apply to all levels of government in Canada, including municipal governments.⁶ In the past, municipalities have largely relied on human rights protections enacted or ratified by other levels of government. Why then, is there a need now to create an additional Charter, establishing human rights and obligations for the City and rights for the residents of the City?

³ *Montreal Charter of Rights and Responsibilities*: online:
http://www2.ville.montreal.qc.ca/vie_democratique_a/pdf/charte_droits_en.pdf

⁴ The San Francisco Ordinance for the Local Implementation Of The United Nations Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW) is at
http://sfgov.org/site/cosw_page.asp?id=10849

⁵ The New York City Human Rights Initiative is described at <http://www.nychri.org/>

⁶ Article 25(1) of the *Universal Declaration of Human Rights* states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." In addition, Canada ratified the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) in 1976 and played a leading role in promoting the adoption and ratification of the *Convention on the Rights of the Child* (CRC) in 1989. Both of these documents recognize the right to an adequate standard of living including adequate housing. Recent reviews of Canada's compliance with the *ICESCR*, and the *International Covenant on Civil and Political Rights* (ICCPR), as well the 1997 review of Canada's performance under the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) all note the deterioration of social programs and the unequal enjoyment of social and economic rights in Canada. Bruce Porter, "Homelessness, human rights, litigation and law reform: a view from Canada" (2004) 10 *Australian Journal of Human Rights* at 133.

i) Taking Ownership of Human Rights

Rather than relying on another level of government for human rights protections, it is more effective for each level of government to take some ownership of fundamental human rights norms. National governments take international human rights standards and transform them into national constitutional provisions. Provinces and territories have their own human rights legislation and complaints mechanisms. Cities and other municipalities also need to consider how human rights apply to their specific jurisdiction, incorporate these human rights values directly into their decision-making and provide their citizens with an accessible and effective way of holding their municipal governments accountable to human rights.

ii) The Obligation Under International Law is to Provide Effective Local Remedies

Monitoring and enforcement mechanisms for international human rights law, in Geneva or at the Inter-American Commission in Washington, are far removed from day to day activities at the municipal level and are not designed to provide effective recourse for most human rights claimants. The duty under international human rights law to provide effective protections and remedies for human rights falls on domestic governments – at all levels. A municipal human rights charter is necessary to transform international human rights into workable tools for effective and responsive decision-making at the local level.

iii) Cities Need to Engage with International Human Rights Reviews

UN human rights bodies have decried the lack of effective responses from different levels of government in Canada to address growing violations of social and economic rights. They have expressed strong concern about inadequate mechanisms in Canada for all levels of government to respond to and address their concerns and recommendations. Most Canadian municipalities have not even considered the unprecedented alarm at human rights violations in Canada from recent United Nations human rights reviews, despite the fact that many of these apply, at least in part, to municipal programs and policies. Recent reviews have, for example, recommended a multi-level government strategy to end homelessness, including improved supportive housing, detailed assessment of the effects of inadequate social assistance, measures to support and protect migrant workers, improved childcare, measures to protect parents from having to relinquish children to foster care because of homelessness and poverty, and

many other issues that relate to municipal authority. The UN Committee has recommended the establishment of “transparent and effective mechanisms, involving all levels of governments as well as civil society, including indigenous peoples, with the specific mandate to follow-up on the Committee’s concluding observations.”⁷ as well as more effective mechanisms for claiming and enforcing social rights. A municipal charter would provide an effective vehicle through which the City would make itself more accountable to international human rights mechanisms

iv) Cooperation with Provincial and Federal Governments to Meet Joint Human Rights Obligations

By bringing international human rights into municipal law, municipalities make themselves equal partners with other levels of government in the implementation of human rights obligations. They acquire leverage with other levels of government to demand provincial and federal responses to human rights violations in cities. International human rights provide a shared framework of responsibility, through which municipalities dealing with poverty and homelessness can urge provincial governments to increase social assistance rates or the minimum wage to ensure access to housing, or advocate for federal funding for inner city programs, or for a national affordable housing strategy.

v) Creating the Foundation for a New Municipal Citizenship

Human rights provide the framework for democratic citizenship at all levels of government, including the local. Indeed, as Eleanor Roosevelt noted universal human rights must be realized at the local level: "Where, after all, do universal human rights begin? In small places, close to home." A consensual human rights language and framework for mutual understanding and equal citizenship is often missing at the city level. Discussion about a bylaw restricting homelessness shelters, for example, should be framed within a common affirmation of the right to housing as a fundamental human right. A municipal human rights charter has the potential to redefine how communities approach and respond to social and economic inequality and to urban divisions, within a framework of social inclusion and equal citizenship.

⁷ UN Committee on Economic, Social and Cultural Rights, Concluding Observations on Canada (May, 2006) E/C.12/CAN/CO/5

vi) A Rights Based Approach to Poverty and Inequality

While a municipal human rights charter would benefit all citizens, it is especially critical for those who are socially and economically disadvantaged, including women, racialized minorities, Aboriginals, people with disabilities, homeless individuals and families and, those living in poverty. Louise Arbour, the UN High Commissioner on Human Rights, has emphasized that it is in the area of social and economic rights that Canada is falling behind and most in need of action.⁸ A municipal charter provides a way for the City to address global problems that are shared by all cities within an international human rights framework and to provide effective remedies for violations of social and economic rights within the context of a modern, global framework of urban democracy.

vii) Joining an Emerging Network of Human Rights Cities

Recent initiatives such as Charter of the Right to the City, the Montréal Charter of Rights and Responsibilities, the European Charter for the Safeguarding of Human Rights in the City, the San Francisco CEDAW Ordinance and the New York City Human Rights Initiative demonstrate an important new focus on incorporating human rights into municipal governance. More than 200 European cities, including Berlin, Rome, Lisbon, Lyon and Stockholm have adopted the European Charter for the Safeguarding of Human Rights in the City. Cities are increasingly acting collectively to learn from each other and to develop new approaches to urban governance.⁹ The human rights movement is a critical aspect to the global emergence of a new model of city governance and more effective collaboration among cities to address common issues.

⁸ L. Arbour, “Freedom From Want” – From Charity to Entitlement’, LaFontaine-Baldwin Lecture, Quebec City (2005), p. 7, available at: www.unhchr.ch/hurricane/hurricane.nsf/0/58E08B5CD49476BEC1256FBD006EC8B1?opendocument

⁹ Lucie Lamarche, “Economic and Social Rights and the Era of Governance and Governance Arrangements in Canada: the Need to Re visit the issue of the Implementation of International Law of Human Rights. Communication” (2007). Online at http://www.srap.ca/publications/lamarche_uwo_september07_.pdf

KEY FEATURES OF A MUNICIPAL HUMAN RIGHTS CHARTER

On the basis of research to date, and the experience of other cities, there appear to be several key features that a municipal human rights charter should include.

i) Statement of Rights

A City Social Charter should be based on a statement of basic rights of citizens. Obligations and responsibilities of municipal government and agencies and other actors are derived from the rights, not vice versa. In particular, the charter should include social and economic rights, drawing on the provisions of the *International Covenant on Economic, Social and Cultural Rights* which are already legally applicable to review of whether decisions made by municipal governments or officials are reasonable. While many cities have included all human rights, including civil and political rights, one option is to focus on social and economic rights that are not adequately addressed by provincial human rights legislation.

ii) Explanation of Obligations and Responsibilities

The Charter should make it explicit that Municipality is obliged to take reasonable measures, within the limits of its authority and its resources, to ensure the realization of the rights recognized in the City Social Charter. The Charter should encourage the development of plans and strategies in collaboration with other levels of government and with other actors to address homelessness, poverty, hunger and other violations of social and economic rights. Guaranteeing rights at the municipal level does not mean that the municipality assumes sole or primary responsibility for ensuring these rights. It should be made clear in the Charter that the responsibility is confined by authority and limited by available resources.

iii) Direction to Decision-Makers

The City Social Charter should include a statement that programs must be designed and administered so as to ensure respect for fundamental rights, and that all decisions made by municipal agencies and staff must be informed by and be consistent with the rights and obligations in the Social Charter. The obligation to interpret statutes and exercise discretion in conformity with international human rights values is one which the Supreme Court has already established as binding on delegated decision-makers.¹⁰ A Municipal Charter would simply make

¹⁰ Baker v Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817, at paras. 69-71.

these obligations more transparent, concrete and effective. There should also be a statement that official plans and by-laws should be interpreted and applied in a manner that is informed by and consistent with these fundamental rights. Again, this is consistent with existing law in relation to the international human rights and the Canadian Charter, but is more likely to be effective if reaffirmed at the municipal level, as a component of the Municipal Social Charter.

iv) Complaints Mechanism

It is increasingly recognized that social and economic rights require an effective complaints mechanism, just as other human rights do.¹¹ This ensures that the problems experienced by marginalized groups are brought to the attention of authorities and adequately addressed. A Municipal Human Rights Charter must be more than symbolic; it must provide new mechanisms for participatory governance and allow residents to hold municipalities and other local actors accountable in practical and effective ways.

There are, however, many different approaches to a complaints mechanism and the status of decisions made pursuant to this. Under the Montreal Charter, complaints are considered by an Ombudsman. Another option is to have a panel or tribunal consider complaints. An innovative model for social rights complaints was developed by a number of national NGOs in the “Alternative Social Charter” at the Federal level, which required parliament to consider and rule on decisions by a “Social Rights Tribunal” within a reasonable period of time. This model could easily be adapted to complaints under a Municipal Social Charter.¹²

v) Participatory Drafting Process with International Human Rights Linkages

Human rights instruments are most effective if citizens feel that the document belongs to them. It is therefore important that a participatory drafting process be established, to ensure that a model of democratic accountability is established as a basis for the new Charter. It is also important that the Charter benefit from experts in international human rights law and advocates from other areas, so that the Charter is able to link to and derive meaning and authority from a broader,

¹¹ See, for example, the initiative at the U.N. to establish a complaints mechanisms for social and economic rights, described at <http://www.opicescr-coalition.org/>.

¹² The *Alternative Social Charter* is discussed and reproduced in J. Bakan & D. Schneiderman, eds., *Social Justice and the Constitution: Perspectives on a Social Union for Canada* (Ottawa: Carleton University Press, 1992), Appendix I at 155.

global human rights movement, with the foundation of the Universal Declaration of Human Rights.

DRAFT CITY OF TORONTO SOCIAL CHARTER¹³

Purpose

The Purpose of the Social Charter for the City of Toronto is to promote the economic, social and environmental well-being of the City and to protect the health, safety and well-being of its people and to ensure compliance of the City of Toronto with economic and social rights under international human rights law.

Rights Guaranteed

1.(1) Everyone has a right to adequate food, clothing, housing, health care, social security, education, work which is freely chosen, child care, support services and other fundamental requirements for security and dignity of the person.

(2) These rights shall be interpreted and applied in a manner consistent with Canada's human rights treaty obligations and the fundamental value of promoting equality and alleviating social and economic disadvantage.

Obligations of the City of Toronto

2.(1) The City of Toronto has an obligation to take steps, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights under section 1 by all appropriate means, including negotiation of agreements with federal-provincial/territorial governments, bylaws, official plans and other measures, programs and policies, in accordance with international human rights treaty obligations.

(2) This obligation shall be carried out in a manner which recognizes the distinct needs and particular circumstances of disadvantaged groups.

¹³ Based in part on a Social Charter Developed by a Coalition of Over 40 National NGOs during the last round of constitutional discussions in Canada – for discussion purposes only.

Interdependence of Rights

3. Municipal law, policies and practices shall be interpreted and applied in a manner consistent with the rights under section 1 and the obligation under section 2, and with the fundamental value of promoting equality and alleviating social and economic disadvantage.

4. Nothing in this Part limits or diminishes the rights or obligations contained in the *Canadian Charter of Rights and Freedoms* or in Ontario's *Human Rights Code*.

Social Rights Sub-committee

5. A Social Rights Sub-committee consisting of at least three full-time members with demonstrated experience in the area of social and economic rights, shall be responsible for evaluating and promoting compliance with this Part.

6. In particular, the Social Rights Sub-committee shall:

- i) submit recommendations to appropriate government and private sector bodies on measures necessary to promote, respect and fulfil the rights under section 1;
- ii) establish and revise standards according to which compliance with the rights under section 1 can be measured;
- iii) evaluate government compliance under sections 5, including through review of municipal laws, regulations, policies and practices;
- iv) promote the production, exchange and dissemination of information and statistics on the social and economic circumstances of individuals with respect to the rights under section 1, especially of those who are members of disadvantaged groups;
- v) encourage and facilitate consultation with non-governmental organizations representative of disadvantaged groups with respect to the rights under section 1;
- vi) collaborate with similar bodies or authorities at the provincial, federal and international level;
- vii) respond to any request for information or invitation to intervene before the Social Rights Panel;
- viii) have the right to intervene in any proceeding before the Social Rights Panel;
- ix) report annually on the progress which has been made in achieving the

- objectives under this Part; and
- x) carry out any other task that is necessary or appropriate for the purpose.

With respect to Canada's international reporting obligations relating to the rights under section 1, the Sub-committee shall, in addition:

- xi) disseminate the findings and recommendations of international treaty monitoring bodies relating to Canada's reports of relevance to the City of Toronto;
- (xii) organize periodic meetings of relevant government bodies, agencies, city staff and non-governmental organizations to discuss the measures taken by the City of Toronto in response to such findings and recommendations; and
- (xiii) submit independent opinions on issues of compliance of City of Toronto policies or programs with social and economic rights in international treaties ratified by Canada, on its own initiative or upon request, where appropriate.

7. The Social Rights Sub-committee shall respond to any request for information or invitation to intervene from the Social Rights Panel, and the Sub-committee shall have the right to intervene in any proceedings before the Panel.

Social Rights Panel

8. A Social Rights Panel, consisting of at least three members with demonstrated experience in the area of social and economic rights, shall be responsible for inquiring into complaints that the City of Toronto has infringed a right under section 1 or failed to meet its obligation under section 2.

9.(1) Any individual or group whose members are directly affected may submit a written complaint to the Panel that the government has infringed a right under section 1 or failed to meet its obligation under section 2.

(2) Upon receipt of a complaint, the Panel shall decide whether to hold a hearing into the complaint, and if so, it shall conduct the hearing.

10. (1) Following the hearing into a complaint under section 9, the Panel shall issue a decision whether or not the complaint is justified.

(2) Where the Panel decides that a complaint is justified, it shall:

- (a) hear submissions from the complainant and the government regarding the measures required to achieve compliance with section 1 or section 5, and regarding the time required to carry out such measures; and
- (b) make an order that the required measures be taken within a specified period of time, including an order requiring the amendment of any City by-law, regulation, policy or practice.

11.(1) In lieu of making an order under section 10, the Panel may, where appropriate, order that the government report back by a specified date on measures taken or proposed to be taken which will achieve compliance with section 1 and/or section 2.

(2) Upon receipt of a report, the Panel may make a further order under subsection (1) or it may make an order under section 10(2)(b) .

12. An order under section 10 shall not come into effect until the City Council has held two regular meetings. The Council may by a majority vote over-ride the order. The Council may indicate its acceptance of the terms of the order prior to the expiry of the time period specified in the order.

13. Upon coming into effect, an order under section 10 may, for the purpose of enforcement, be made an order of the Provincial Court by following the usual practice and procedure.