



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

**Submission to the Committee on Economic, Social and Cultural Rights
For the 57th Session of the Committee on Economic, Social and Cultural Rights
(22 Feb 2016 - 04 Mar 2016)**

February 1, 2016

1. The Centre for Equality Rights in Accommodation in Ontario ("CERA") makes the following submissions to the Committee on Economic, Social and Cultural Rights ("CESCR") with regard to the review of Canada under the International Covenant on Economic, Social and Cultural Rights ("ICESCR") in the 57th session of the Committee.
2. CERA was founded in 1987 and is the only organization in Canada primarily dedicated to promoting human rights in housing and ending housing discrimination. 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 works collaboratively with non-governmental organizations across Canada to promote and enforce economic and social rights.

I. The housing and homelessness crisis in Canada

3. 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.
4. 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

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

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.

5. A common measure of affordability used in Canada refers to total shelter costs as a proportion of total household income. Housing is considered affordable if shelter costs account for less than thirty per cent of before-tax household income. About forty per cent of rental households pay more than thirty per cent of their income on housing, with low-income Canadians paying an even higher percentage of their income on shelter costs.³
6. Despite the growing problems of homelessness and lack of affordability, the Government of Canada has 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.
7. Since 1990, Canada’s population has increased by almost thirty per cent; however, the government’s annual investment in housing has decreased by over forty-six per cent. These reduced investments have resulted in fewer, and less effective, housing programs.⁴
8. The number of social housing units built by the federal 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. While there have been some new investments since the Committee last reviewed Canada in 2006, they are not enough to respond to the need for real investment in housing to address the homelessness crisis.⁵

II. Implementation of rights found in the ICESCR

9. The *Canadian Charter of Rights and Freedoms*⁶ (“the *Charter*”) guarantees Canadians the right to life, liberty, and security of the person. Canada has acknowledged before the CESCR that this protection guarantees the basic necessities of life, in accordance with the Covenant.⁷

² Stephen Gaetz, Tanya Gulliver and Tim Richter, *The State of Homelessness in Canada 2014* (Toronto: The Homeless Hub Press, 2014) at 5, available online: <http://homelesshub.ca/sites/default/files/SOHC2014.pdf> [Gaetz].

³ Gaetz at 23.

⁴ Gaetz at 4.

⁵ Gaetz at 4 – 5.

⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

⁷ Committee on Economic, Social and Cultural Rights, *Concluding Observations: Canada (1998)*, at para. 5 [CESCR Concluding Observations, 1998].

10. In the 2006 review of Canada, the CESCR noted its concern with Canada's restrictive interpretation of its obligations under the ICESCR and Canada's position that it could implement its obligations under the Covenant by adopting policies rather than enacting domestic legislation recognizing these rights.⁸
11. In 2006 the CESCR noted its concern that the lack of domestic legislation recognizing economic, social and cultural rights results in a lack of legal redress for individuals whose rights have been infringed and their concern that a lack of effective domestic enforcement mechanisms exist for these rights. Further, the Committee noted their concern about Canada's practice of urging domestic courts to interpret the *Charter* in a way that denies the protection of Covenant rights.⁹
12. Despite the Committee's concerns in 2006 and its own acknowledgment in 1998 noted above, Canada continues to take the position before domestic courts that the *Charter* should not be interpreted to protect the rights found in the ICESCR.
13. In *Tanudjaja et al. v. Attorney General (Canada), et al.*,¹⁰ four individuals with lived experience of homelessness and precarious housing, along with CERA, filed an application against the governments of Canada and Ontario. The applicants argued that Canada and Ontario had violated section 7 (protecting the right to life, liberty and security of the person) and section 15 (protecting the right to equality) of the *Charter* by failing to implement housing strategies to address the crisis of homelessness. This was the first case in Canada to challenge the constitutionality of governments' failure to address the crisis of homelessness.
14. Ontario and Canada brought a motion to dismiss the application without a hearing considering the evidence, arguing that the action had no reasonable chance of success. In particular, the governments argued that the issues raised by the applicants were non-justiciable because the rights found in the *Charter* should not be interpreted to impose positive obligations on the government ensuring that Canadians have access to adequate housing.
15. The Ontario Superior of Court agreed with the governments' position that the *Charter* did not impose positive obligations under sections 7 and 15 to address homelessness, and dismissed the application.¹¹ This decision was upheld by the Ontario Court of Appeal, who noted that the right to housing did not exist

⁸ Committee on Economic, Social and Cultural Rights, *Concluding Observations: Canada (2006)*, at para. 11 [CESCR Concluding Observations, 2006].

⁹ CESCR Concluding Observations, 2006 at para. 11.

¹⁰ *Tanudjaja et al. v. Attorney General (Canada), et al.*, 2013 ONSC 1878.

¹¹ *Tanudjaja et al. v. Attorney General (Canada), et al.*, 2013 ONSC 1878.

under the *Charter*, and that it was outside the limits of the court to embark upon judicial supervision of the adequacy of housing policy in Canada and Ontario.¹²

16. The Supreme Court of Canada denied leave to appeal the lower court's ruling in June 2015.¹³ This effectively leaves the applicants, and all Canadians living in a state of homelessness, without an effective legal mechanism to enforce their right to adequate housing found in the ICESCR.
17. Further, Canada has not signed and ratified the Optional Protocol of the ICESCR. Accordingly, a Canadian whose economic, social and cultural rights have been infringed by the State cannot file an individual complaint to the Committee. The United Nations has said that it is through individual complaints that "human rights are given concrete meaning."¹⁴ As a result of Canada's restrictive positions, economic, social and cultural rights do have concrete meaning to Canadians who are denied access to justice regarding these rights in both domestic and international forums.

Recommendations

18. **We recommend that the Government of Canada commit to adopting an interpretation of the *Charter* before domestic courts that includes the protection of economic, social and cultural rights; in particular, we recommend that the Government of Canada commit to adopting an interpretation of the *Charter* that includes the right to basic necessities, and specifically, the right to adequate housing under section 7.**
19. **We recommend that the Government of Canada sign and ratify the Optional Protocol to the ICESCR.**

III. Protection from discrimination based on socio-economic status

20. The *Canadian Human Rights Act* is a federal statute with the express purpose of extending the law to provide equal opportunity to Canadians who may otherwise face discrimination based on a number of prohibited grounds, including race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or criminal conviction.¹⁵
21. The *Canadian Human Rights Act* does not prohibit discrimination on the basis of socio-economic status. Because of this, people living in poverty often cannot claim their rights as found in the ICESCR.

¹² *Tanudjaja et al. v. Attorney General (Canada), et al.*, 2014 ONCA 852.

¹³ *Tanudjaja et al. v. Attorney General (Canada), et a.*, 2015 CanLII 36780 (SCC).

¹⁴ See: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#whocan>

¹⁵ *Canadian Human Rights Act*, RSC 1985, c H-6 at s. 2.

22. Provincial and territorial legislation also lack protection for those living in poverty. Only Québec's *Charter of Human Rights and Freedoms* protects residents from discrimination on the basis of social condition.¹⁶
23. Further, at least one provincial government in Canada has taken the position before domestic courts that the right to equality as found in section 15 of the *Charter*, does not include the right to be free from discrimination on the basis socio-economic status because poverty is not an immutable characteristic.¹⁷

Recommendations

- 24. We recommend that the Government of Canada amend the *Canadian Human Rights Act* to prohibit discrimination on the basis of socio-economic status.**
- 25. We recommend that the Government of Canada commit to adopting an interpretation of section 15 of the *Charter* before domestic courts that includes the protection of discrimination on the basis of socio-economic status.**

IV. The Right to Adequate Housing

26. About one quarter of Canadian households spend thirty percent or more of their total household income on housing.¹⁸ Twenty percent of all households in Canada spend more than fifty percent of their income on housing costs, putting them at risk of homelessness.¹⁹ Issues of housing affordability are even more pronounced for tenants, with about forty percent of households that rent their housing paying thirty percent or more of their total income towards shelter costs.²⁰

a) Inadequate social assistance rates

27. 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.

¹⁶ *Charter of Human Rights and Freedoms*, RSQ, Chapter C-12 at s.10.

¹⁷ *Boulter v. Nova Scotia Power Incorporated*, 2009 NSCA 17.

¹⁸ Statistics Canada, 2011 National Household Survey: Homeownership and Shelter Costs in Canada, available here: <http://www.statcan.gc.ca/daily-quotidien/130911/dq130911b-eng.htm> [Statistics Canada, 2011 National Household Survey].

¹⁹ Gaetz at 5.

²⁰ Statistics Canada, 2011 National Household Survey.

28. For example, in Ontario a single person receives \$661 a month, or \$8,172 annually.²¹ 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.²²
29. Although social assistance is administered by the provinces and territories, the Government of Canada 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 under the ICESCR.

b) The connection between housing and health

30. As noted in the submissions and recommendations made to the CESCR for the review of Canada by Canada Without Poverty, poverty is the largest determinant of health affecting both physical and mental health outcomes.²³ Specifically, experiencing homelessness can result in an increased risk of serious health conditions and premature death.²⁴
31. Homeless people are a higher risk for illness and have higher death rates than the general population. In one study, researchers found that living in shelters, rooming houses, and hotels is associated with a much higher mortality rate.²⁵
32. 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.
33. Indoor environmental health risks, including exposure to mould, lead, and pesticides, are heightened for those living in adequate housing. Children and older adults are at the greatest risk of negative health outcomes as a result of substandard housing. In particular, children living in inadequate housing are at risk of damage to their developing brains and bodies. In this way, inadequate

²¹ 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.

²² Rent Board, "https://www.rentboard.ca/rentals/rental_rates.aspx?locid=4893", available here: https://www.rentboard.ca/rentals/rental_rates.aspx?locid=4893.

²³ World Health Organization, "Poverty and social determinants", available here: <http://www.euro.who.int/en/health-topics/environment-and-health/urban-health/activities/poverty-and-social-determinants>.

²⁴ Stephen W. Hwang, "Homelessness and health" CMAJ (January 2001), available here: <http://www.cmaj.ca/content/164/2/229.short>.

²⁵ S.W. Hwang et al. "Mortality among Residents of Shelters, Rooming Houses, and Hotels in Canada: 11 Year Follow-up Study," BMJ 339 (2009).

housing serves to perpetuate health disparities and socio-economic inequalities.²⁶

d) The need for a human rights based national housing and homelessness strategy

34. Despite the growing housing affordability crisis, the federal government has continued to decrease its investment in housing. Of particular importance today is the impending expiration of operating agreements between the federal government and social housing providers throughout Canada. Without a renewed commitment from the federal government, hundreds of thousands of Canadian households are at risk of losing affordable rents.²⁷
35. A number of international bodies have noted their concern about Canada's failure to take measures to ensure all Canadians have access to adequate housing and the effect this has on marginalized and vulnerable Canadians.
36. In fact, the CESCR has described homelessness in Canada "a national emergency" and urged the federal, provincial and territorial governments to address homelessness and inadequate housing "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 support services for persons with disabilities, improving protection of security of tenure for tenants and improving protection of affordable rental housing stock from conversion to other uses."²⁸
37. To date, Canada still has not implemented a national housing and homelessness strategy. Canada needs a human rights-based national strategy that ensures the right to adequate housing is protected, and that includes a clear mechanism through which Canadians can claim this right.
38. Bill C-400, *An Act to Ensure Secure, Adequate, Accessible and Affordable Housing for Canadians* was a private members bill introduced in Parliament in 2012. It addressed homelessness in Canada and would have implemented Canada's international human rights obligations regarding the right to adequate housing. The Bill had the support of all opposition parties, however, it was defeated by the government in 2013. Despite this, the Bill set the framework for a human rights based national housing and homelessness strategy and should serve as a useful starting point for the current government to build upon.

²⁶ Canadian Partnership for Children's Health and Environment, "Rent Safe", 2015, available here: <http://www.healthyenvironmentforkids.ca/collections/rentsafe>.

²⁷ Gaetz at 4.

²⁸ Concluding Observations, 1998 at para. 46.

Recommendations

- 39. We recommend that the Government of Canada work with the sub-national governments to raise social assistance rates to adequate levels, including raising shelter allowances to levels that reflect the average market rent.**
- 40. We recommend that the Government of Canada explicitly recognize the right to adequate housing in Canadian law, and affirm that the Government of Canada will work with sub-national governments to recognize the right to adequate housing in provincial and territorial human rights legislation.**
- 41. We recommend that the Government of Canada implement a human rights-based national housing and homelessness strategy that includes measurable goals, complaints procedures, and transparent accountability mechanisms.**