

# **RIGHT AT HOME**

## **Summary report on the consultation on human rights and rental housing in Ontario**

### **ONTARIO HUMAN RIGHTS COMMISSION**

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## 1. INTRODUCTION

This summary report is a short version of a longer, more comprehensive report. Both of these reports have been prepared based on a province-wide consultation on rental housing and human rights by the Ontario Human Rights Commission (the Commission).

A key goal of these reports is to help people and organizations across Ontario better understand human rights in rental housing. Housing providers, governments and others need to feel “right at home” in understanding what obligations exist and how to fulfill them. Tenants also need to feel “right at home” in being able to access and live in rental housing that is free from discrimination. As the recommendations and commitments in the “Framework for action” show, we all have a role to play in understanding and eliminating housing discrimination in our province.

## 2. OVERVIEW

The Commission recognizes that many landlords and housing providers across Ontario take their human rights obligations seriously and that a large percentage of tenants have decent housing. However, in this consultation, the Commission heard about the situations faced by tenants experiencing discrimination and systemic barriers in accessing and maintaining adequate and affordable housing. For refugees, immigrants, transgendered people, lone mothers, Aboriginal people, people with mental illnesses or other disabilities, and other people protected under the *Ontario Human Rights Code (Code)*, the human rights dimensions of the housing crisis are undeniable.

The Commission heard about a range of discriminatory situations experienced by the most vulnerable of Ontario’s tenants. For example, many people raised concerns about discriminatory advertisements for “adult only” buildings or tenants who are working.

Tenants and their advocates spoke at length about the discriminatory impacts of commonly used screening criteria and requirements such as credit checks, guarantors, rent deposits, employment verification and income requirements. Housing providers and tenants described significant challenges relating to the duty to accommodate in rental housing, particularly in relation to mental illness.

Yet, human rights claims raising these kinds of issues, and those of a more systemic nature, are rarely filed and the rights that already exist under the *Code* are largely not enforced. This creates a situation in which housing providers,

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government and other responsible parties may be unaware of their obligations and the extent to which they may be failing to fulfill them.

This reality needs to be replaced by a housing sector in which human rights are known by tenants, housing providers, governments and other responsible parties. There also needs to be effective enforcement to make sure that the rights of tenants protected under the *Code* have meaning. Clearly identifying expectations through consistent enforcement also benefits parties responsible for complying with the *Code*.

In previous consultations, the Commission heard about the impacts of inadequate housing options and the dearth of adequate affordable housing for older Ontarians and families. These issues continue to exist. In this consultation, the Commission also heard more broadly about the impacts of current problems in the housing sector on people who are racialized, have disabilities such as mental illnesses and others. The lack of coordinated actions on behalf of all levels of government to eliminate homelessness and to provide sufficient levels of adequate and affordable housing to meet the needs of *Code*-protected groups and individuals was a concern for many. Housing strategies aimed at addressing homelessness and increasing access to affordable housing in Ontario must be consistent with international human rights obligations, the *Code* and applicable human rights principles.

A key theme in this consultation was the link between poverty, *Code* grounds such as disability or race, and homelessness. Consultees spoke about how the rates of public assistance and the minimum wage have not kept pace with average rents across the province. As a result, a substantial group of *Code*-protected people with low incomes due to social assistance, minimum wage rates or part-time work are vulnerable to being under-housed or excluded from the rental market. Measures must be put in place to make sure that low-income Ontarians are able to afford average rents, food and other basic necessities.

Consultees spoke about systemic problems in the housing sector such as a need for inclusive design and barrier removal relating to both physical structures and policies or programs. In practical terms, the Commission heard that the human rights of protected groups may be compromised when decisions have to be made about who should get access to a limited but precious resource – affordable, adequate housing – whether in the private rental market or in social housing. For example, there are human rights impacts associated with decision-making and priority setting around chronological waiting lists for subsidized housing. There was some agreement between housing providers and tenant advocates that a shift to widespread availability of portable housing allowances is a potential solution worth exploring.

The Commission also heard much about the prevalence of discriminatory Not-In-My-Back-Yard (NIMBY) opposition to affordable or supportive housing projects,

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and the impact of this on tenants, housing providers and society as a whole. People with disabilities including mental illnesses, young parents and other persons protected under the *Code* may be exposed to discriminatory comments or conduct both during the planning process and once the housing is built. In many cases, NIMBYism prevents, delays or increases the costs of developing much needed housing for *Code*-protected groups and individuals. It is time that a comprehensive strategy be developed to make sure that discriminatory NIMBYism does not hinder the creation of affordable housing for *Code*-protected people.

### **3. FRAMEWORK FOR ACTION**

Protecting the human rights of vulnerable Ontarians requires a radically different response to the issues of discrimination identified in the Commission's consultation report, and the reports of numerous international bodies. We must all bring housing human rights into our homes, apartment buildings, property management offices, government offices, tribunals and commissions, and most importantly, into our collective awareness. This framework suggests concrete action to address the human rights issues identified in the consultation and in numerous reports on housing.

This is not an exhaustive list of actions. Rather, the purpose of the Commission's recommendations is to identify areas in which key stakeholders can demonstrate a commitment to tackling the human rights issues raised and take some first steps to do so. A critical element of this framework for action is the recognition that we must all work together, through partnerships and creative solutions, to make the substantive and long-lasting changes that are warranted.

Housing is an internationally protected right. This understanding should inform our approaches, actions and ways in which we evaluate the effectiveness of any measures implemented to improve access to housing for *Code*-protected individuals and groups in Ontario. It is also important to recognize the link between poverty and human rights violations in housing. Concrete steps must be taken to ensure an adequate standard of living and access to housing for low-income groups and individuals protected under the *Code*.

#### **3.1. Government**

Given the continued existence of human rights impacts of the provincial housing system, a key priority is for government to make a coordinated effort to review availability of, and access to, adequate and affordable housing from a human rights perspective. As the Special Rapporteur on affordable housing noted in his March 2008 statement, "As a very wealthy country, with significant surplus in the

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federal budget, immediate attention is required for the most vulnerable part of the population living in inadequate housing and living conditions. There is no justification for not massively engaging in the improvement of the situation of all those that face inadequate housing and living conditions throughout Canada.”

Housing in Canada is administered through a complex set of relationships, agreements and responsibilities allocated between the various layers of government – federal, provincial or territorial, and municipal. For example, municipalities run shelters and decide whether, and on what terms, to approve supportive housing projects and other forms of affordable housing such as rooming houses and second units. The provincial government, and the Ministry of Municipal Affairs and Housing (MMAH), have primary responsibility for housing in the province, for providing funding to municipalities and for taking steps to give effect to human rights in housing in the province. At the same time, the policies, programs and funding provided by the federal government, and federal agencies such as the Canada Mortgage and Housing Corporation, shape the reality of human rights in the province and across the country.

While recognizing the difficulties posed by shared jurisdiction, the Special Rapporteur has noted that the state, whether federal or provincial, municipality or other authorities, is still required to devise strategies to ensure the implementation of the right to adequate housing.

## **RECOMMENDED ACTIONS**

### ***All levels of government working together***

1. THAT the Government of Canada adopt a national housing strategy, in consultation with provincial, territorial and municipal governments (where feasible and appropriate), that includes measurable targets and provision of sufficient funds to accelerate progress on ending homelessness and ensuring access of all Canadians, including those of limited income, to housing of an adequate standard without discrimination
2. THAT the Government of Ontario, along with other provincial and territorial governments, call on the Government of Canada to adopt a national housing strategy.
3. THAT the federal, provincial and territorial governments of Canada give effect to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and implement the recommendations of the Committee on Economic, Social and Cultural Rights (CESCR) and other international bodies.

4. THAT all levels of government work together to integrate housing rights into comprehensive and coordinated poverty reduction strategies.
5. THAT governments expand on measures to help housing providers meet the requirements of inclusive design and accommodation. Options that may be considered include grants and other avenues of funding, programmes of education or changes to legislation, regulations or policies.

### **Government of Ontario**

6. THAT the Government of Ontario, in the absence of a national housing strategy, adopt a provincial housing strategy. Such a provincial strategy should include measurable targets and provision of sufficient funds to accelerate progress on ending homelessness and ensuring access of all Ontarians, including those of limited income, to housing of an adequate standard without discrimination. It should also take into consideration the needs of Aboriginal people, people with disabilities including mental illness, women experiencing domestic violence, lone parents, immigrants and newcomers and other people living in poverty or with low incomes who are identified by *Code* grounds.
7. THAT the Ontario legislature pass a law such as Private Member's Bill 47, *An Act to establish the right to adequate housing as a universal human right*, to recognize that every person has a right to adequate housing in accordance with Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.
8. THAT the Government of Ontario provide a substantive response that outlines how it will address the concerns raised by the Special Rapporteur on affordable housing, and post such a response on its website.
9. THAT the Government of Ontario work with community organizations and municipalities to identify ways to apply a human rights approach to reducing and preventing homelessness in the province.
10. THAT the Government of Ontario review and improve funding rates, programs, laws and regulations in the province of Ontario to make sure that low-income tenants are able to afford average rents, food and other basic necessities. Specific attention should be given to:
  - ensuring that minimum wage rates are indexed to inflation and allow a full-time earner to live above the low-income cut-off
  - making the shelter allowance portion of social assistance benefits sufficient to pay average rents
  - eliminating claw-backs from social assistance payments
  - increasing availability of portable housing allowances

- increasing availability of rent banks to allow tenants to pay rent deposits and to cover arrears
- assessing impacts of rent control/vacancy decontrol.

11. THAT the Government of Ontario's Cabinet Committee on Poverty Reduction be guided by the *ICESCR*, concerns and recommendations of international human rights committees and the dimensions of race, disability/mental illness, sex and family status that have been raised in this consultation.

12. THAT the Ontario *Building Code* be amended to reflect the legal requirements and principles set out in the Ontario *Human Rights Code* (*Code*), including the principle of accommodation to the point of undue hardship. For example, to require that when a building is designed or renovated, it be made accessible to and inclusive of all members of society. Specific areas for amendment are discussed in greater detail in the Commission's *Submission Concerning Barrier-Free Access Requirements in the Ontario Building Code* (March 2002).

13. THAT standards and regulations under the *Accessibility for Ontarians with Disabilities Act* ("AODA") be harmonized with the *Code* and incorporate the principle of accommodation to the point of undue hardship. Specific concerns about the most recent proposed standard have been raised publicly by the Commission in its *Submission of the Ontario Human Rights Commission to the Transportation Standards Review Committee regarding the Initial Proposed Transportation Accessibility Standard* (August 2007).

14. THAT irrespective of when the Ontario *Building Code* is amended and the AODA standards are harmonized with the *Human Rights Code*, the Government of Ontario comply with the requirements of the *Human Rights Code* and the principles in the *Policy and Guidelines on Disability and the Duty to Accommodate* and educate housing providers of their respective duties in this regard.

15. THAT the Government of Ontario increase availability of supportive housing and appropriate support services and ensure that social housing providers have sufficient funds to meet their duty to accommodate.

16. THAT the Ontario *Human Rights Code* be amended as follows:

- explicitly list gender identity as a prohibited ground of discrimination and harassment in sections 1, 2(1) and 2(2), 3, 5(1) and (2) and 6
- include sexual orientation as a prohibited ground of harassment in sections 2(2) and 5(2).

17. THAT the Government of Ontario consult with the people of Ontario with a view to:

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- amending the *Code* to include record of offences as a prohibited ground of discrimination in subsection 2(1) where it is not a *bona fide* requirement and re-define “record of offences” in subsection 10(1)
- amending O. Reg. 290/98 to clarify what tenant selection practices are discriminatory in a way that can be understood by both housing providers and tenants. Specific amendments could include:
  - prohibiting housing providers from inquiring into or considering the source of a tenant’s income
  - clarifying the circumstances under which it is appropriate to require a prospective tenant to obtain a guarantee for the rent
  - indicating that security deposits in excess of those allowed under the *RTA* may not be charged
  - prohibiting the usage of minimum income ratios (other than as may be required to determine a tenant’s eligibility for rent-geared-to-income under section 3), and
  - prohibiting police record checks that disclose information other than that which pertains to criminal convictions.

18. THAT the Ministry of Municipal Affairs and Housing (MMAH) work with social housing service managers and municipalities to collect data to evaluate barriers associated with the existing approaches to chronological allocation of subsidized housing based on waiting lists and identify ways to remove barriers for persons and groups protected under the *Code*.

19. THAT MMAH update the information on “Discrimination and Harassment in Rental Housing” on its website to make clear that the *Code* has primacy over the *Residential Tenancies Act (RTA)* and to highlight relevant parts of this consultation report, in consultation with the Commission.

20. THAT MMAH initiate a consultation with regard to amending the *RTA* to:

- explicitly identify common discriminatory practices as being prohibited in the *RTA* to increase awareness and enforcement of *Code* rights. Specific amendments would include:
  - prohibiting “adult only” buildings and related advertising, and
  - clarifying that policies limiting pets must not exclude people with disabilities and other *Code*-related needs
  - prohibiting requests for tenants to sign additional contracts outside of their lease.
- address any human rights impacts of:
  - the definition of tenant (section 2)
  - vacancy decontrol (section 113)
  - the eviction process for care home tenants (section 148)

- the exclusion from review of eligibility of rent-geared-to-income assistance under the *SHRA* or other housing assistance (section 203)

21. THAT MMAH initiate a consultation with a view to amending the *Social Housing Reform Act (SHRA)*, or take other action, to make sure that:

- *Code* needs are accommodated to the point of undue hardship in relation to reporting deadlines, guest policies and other requirements
- there is an independent, impartial review of decisions that affect a tenant's eligibility for a subsidy.

### 3.2. Decision-makers

In this consultation, the Commission heard about situations in which the decisions and processes of decision-makers, including the Landlord and Tenant Board and social housing service managers, may not be fully consistent with the *Code*. For example, concerns about applying the duty to accommodate were raised by many consultees. Housing providers, tribunals, government and others responsible for making housing decisions can plan to meet accommodation needs by proactively putting in place accommodation policies and procedures and informing themselves about the primacy of the *Code* and the duty to accommodate to the point of undue hardship.

#### RECOMMENDED ACTIONS

22. THAT decision-makers, including service managers and the Landlord and Tenant Board (LTB), develop accommodation policies and procedures in accordance with the Commission's recently revised *Guidelines on Developing Human Rights Policies and Procedures*. Such policies should clearly provide a process for dealing with accommodation issues like language interpretation and extensions to deadlines.

23. THAT the *Code*, the *RTA* and *SHRA* be interpreted and applied by tribunals, service managers and other decision-makers in a manner consistent with the *Code* and the *ICESCR*. For example, that the LTB consider the fundamental importance of housing and apply the *Code* principle of accommodation to the point of undue hardship when considering whether to evict a tenant with a mental illness for having interfered with the reasonable enjoyment of rental premises.

### **3.3. Partners in the development of affordable housing**

The barriers created by NIMBY opposition cannot be overcome by any one stakeholder in isolation. The committed involvement of housing providers and developers, municipalities, municipal affordable housing committees and committees of adjustment, and other levels of government is necessary to eliminate these kinds of barriers to creating new and affordable housing. Neighbourhood groups, local business associations and homeowners in communities across Ontario must also be aware that it is not acceptable to oppose affordable housing developments, just because of who will live in them, when the intended residents are people protected under the *Code*.

#### **RECOMMENDED ACTIONS**

24. THAT all organizations, institutions and individuals developing, planning, approving or giving input with regard to affordable housing for *Code*-protected groups take steps to monitor for discriminatory NIMBY opposition and modify their policies, practices and actions to prevent and address it. For example, a municipality might decide not to hold a community forum to discuss a particular housing project if requests for further information about the project appear to be based on discriminatory stereotypes. Alternatively, it may use such a forum as an opportunity to address such stereotypes.
25. THAT organizations across the province, including community groups, the Government of Ontario and municipalities/municipal associations, work in partnership to develop a province-wide strategy to address and prevent discriminatory NIMBY opposition to affordable housing development, in consultation with the Commission.

### **3.4. Social housing providers**

In the consultation, the Commission heard about problems arising from chronological waiting lists for social housing, and disparities in applying the duty to accommodate by service managers when exercising discretion to extend timelines for reporting requirements. While social housing providers are constrained in some regards by government funding, legislation and other requirements, there are still opportunities for social housing providers to be part of the solution to the human rights issues identified in this consultation.

## RECOMMENDED ACTIONS

26. THAT all social housing providers develop policies and procedures to address discrimination and harassment, accommodation requests and human rights concerns in accordance with the Commission's recently revised *Guidelines on Developing Human Rights Policies and Procedures*. They should clearly provide a process for dealing with accommodation issues like requests for extensions to deadlines and changes to occupancy rules. In addition, they should also provide a process for tenants to raise concerns about discrimination.
27. THAT social housing provider associations work with municipalities, and the Government of Ontario, to identify best practices in human rights compliance for social housing providers, and to share this information with social housing providers throughout the province to help them enhance their ability to proactively comply with the *Code*.
28. THAT all builders, renovators, designers, developers and housing providers implement the principles of inclusive design in all stages of their work with respect to social housing. For example, to plan housing to meet the needs of all members of society when designing buildings and also when retrofitting, repairing or renovating buildings.
29. THAT social housing providers review the application processes, policies and rules associated with housing programs to identify and remove discriminatory barriers. Such barriers may be identified in consultation with tenant advocates and in consideration of Commission policies. Where such barriers relate to requirements imposed by legislation, regulation or government policy, it is recommended that social housing providers advocate for changes to such requirements with responsible agencies or levels of government.
30. THAT social housing service managers work with MMAH and municipalities to collect data to evaluate barriers associated with the existing approaches to chronological allocation of subsidized housing based on waiting lists, and identify ways to remove barriers for persons and groups protected under the *Code*.

### 3.5. Private-market housing providers

Consultees indicated that discriminatory practices, such as tenant screening using rent-to-income criteria and challenges in applying the duty to accommodate, exist in the private rental housing sector. Landlords, property managers and housing provider associations need to know about their obligations and have the support they need to be able to fulfill them.

#### RECOMMENDED ACTIONS

31. THAT housing provider associations work with MMAH to communicate clearly to housing providers that the use of rent-to-income ratios in selecting tenants is prohibited under the *Code* and therefore also under the *RTA*.
32. THAT all housing providers develop policies and procedures to address discrimination and harassment, accommodation requests and human rights concerns in accordance with the Commission's recently revised *Guidelines on Developing Human Rights Policies and Procedures*. Such policies should clearly provide a process for dealing with accommodation issues like modifications to units and situations in which tenants are harassing each other.
33. THAT irrespective of when the Ontario *Building Code* is amended and the *AODA* standards are harmonized with the *Human Rights Code*, housing providers, builders, renovators, designers and developers comply with the requirements of the *Human Rights Code* and the principles in the *Policy and Guidelines on Disability and the Duty to Accommodate* when constructing buildings, making renovations and designing programs and services. For example, that buildings be designed or retrofitted to include visual alerting systems for people with hearing impairments.
34. THAT housing providers take steps to ensure that their policies, rental criteria and tenant screening practices are not having an adverse impact on *Code*-protected people, and that the rental housing provided is inclusively designed to accommodate a range of *Code*-protected people including families with young children, Aboriginal people, people who are racialized or newcomers, and persons with disabilities.
35. THAT housing provider associations work with the Commission to help their members, and other housing providers, proactively comply with the *Code* (for example, through education and training, voluntary certification programs or other measures).

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### **3.6. Service Providers**

As the Commission heard in this consultation, there are circumstances in which the withdrawal of support services by a support service provider can result in the loss of housing for a person protected under the *Code*. In such situations, service providers may also have their own duties under section 2 of the *Code*.

#### **RECOMMENDED ACTIONS**

36. THAT service providers review current programs, policies and practices, and take steps to assist, where possible, tenants with disabilities to receive appropriate services to enable them to live independently, taking into account the duty to accommodate and the fact that, in some cases, withdrawal of services or decreased services may result in the loss of housing. For example, an organization that provides support services to help a person with a disability perform the essential duties of day-to-day living in a rent-geared-to-income social housing unit has an important role to play in helping this person maintain his or her housing.

### **3.7. Tenant organizations and human rights advocates**

Throughout the consultation, there was broad consensus that there was a lack of awareness of the *Code* and its application in rental housing. Tenant organizations and human rights advocates also play an important role in addressing this.

#### **RECOMMENDED ACTIONS**

37. THAT human rights advocates and tenant organizations engage with the Commission to identify and implement measures to increase awareness of human rights issues in rental housing throughout the province, including in local communities.

### 3.8. The Ontario Human Rights Commission

During this consultation, the Commission was repeatedly reminded of its important function in advancing human rights policy, engaging in strategic initiatives (such as inquiries or litigation) to address systemic discrimination, and in raising public awareness of human rights and rental housing. The Commission takes these responsibilities seriously given the international protections of the right to housing and the fact that housing is essential to ensuring dignity, inclusion and full participation for all.

#### COMMITMENTS

38. The Commission will consider the strategic use of its mandate, which includes public inquiries, interventions and applications, to address situations of discrimination related to rental housing in light of the broad systemic context identified in this consultation and the *ICESCR*.
39. The Commission will consider initiating applications, public inquiries or taking other action with regard to laws, such as the *Building Code*, or standards such as those under the *AODA* to the extent that they are inconsistent with the requirements of the *Code*.
40. The Commission will meet with the Government of Ontario, including the Secretary of Cabinet, MMAH, Ministry of Community and Social Services, and the Anti-Poverty Cabinet Committee, to review the content of this report and to work towards complying with international treaties and covenants that guarantee the right to an adequate standard of living, including housing.
41. The Commission will develop a policy on rental housing and human rights that will include:
  - a broad and purposive interpretation of the housing rights in section 2 of the *Code*
  - clear guidance on the requirement to design inclusively and accommodate to the point of undue hardship in the context of housing
  - clarification of forms of discrimination in housing including harassment, discriminatory tenant screening and systemic discrimination, and
  - a clear statement on organizational responsibility and preventing and responding to discrimination in rental housing.

42. The Commission will further examine the implications of including “social condition” as a prohibited ground of discrimination and harassment in sections 1, 2(1) and 2(2), 3, 5(1) and (2) and 6 of the *Code*.
43. The Commission will be available to consult with community organizations, municipalities/municipal associations and the Government of Ontario to assist in the development and implementation of a province-wide strategy to address and prevent discriminatory NIMBY opposition.
44. If the Commission identifies municipal by-laws or other practices that contribute to NIMBYism relating to prohibited grounds of discrimination, it will consider the strategic use of its powers to have these addressed. This may include public inquiries, education, and supporting or initiating a human rights application or *Charter* case to challenge those by-laws or practices.
45. The Commission will encourage partnerships with housing provider associations, including Federation of Rental-housing Providers of Ontario, Co-operative Housing Federation of Canada, Ontario Non-Profit Housing Association and the Landlord’s Self Help Centre, to identify ways in which the Commission can support them in helping their members, and other housing providers, proactively comply with the *Code*.
46. The Commission will develop partnerships with, and materials for, community organizations across the province, including those representing or providing services to tenants and housing providers to assist them in delivering public education in local communities.
47. The Commission will partner with community organizations to develop a public awareness campaign, including plain language brochures, to address stereotypes, harassment and discrimination in rental housing.