

# **RIGHT AT HOME**

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

### **ONTARIO HUMAN RIGHTS COMMISSION**

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# 1. EXECUTIVE SUMMARY

This report is the end result of a province-wide consultation on rental housing and human rights by the Ontario Human Rights Commission (the Commission). It documents what the Commission heard and aims to increase our collective understanding of human rights in rental housing. Individuals and organizations responsible for implementing and advancing housing rights protections 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 section 6: “Framework for action” show, we all have a role to play in understanding and eliminating housing discrimination in our province.

The Commission recognizes that many landlords and housing providers across Ontario take their human rights obligations seriously and that a large percentage of tenants are satisfactorily housed. 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.

This report describes a range of discriminatory situations experienced by the most vulnerable of Ontario’s tenants, including inappropriate advertisements, discriminatory stereotypes and negative attitudes. 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, 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 of the *Code* 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<sup>1</sup> and families.<sup>2</sup> 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 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, 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.

## 2. INTRODUCTION

Human rights in rental housing are not just a concern for housing providers and government, although they clearly share a large part of the responsibility. Nor are they a matter only of interest to a small group of tenants and their advocates. We all have a stake in ensuring that the human rights protections we value have meaning in our communities.

This report focuses on the serious human rights issues that undermine the housing security of Ontario's most vulnerable tenants, and sets out recommendations and commitments to begin to address these concerns. The issues noted in this report have taken a long time to develop and will take a concerted effort to address. What this report points out is that a human rights analysis provides a further tool to help us all work together to address the fundamental issues of inequality within the rental housing sector. The *Code* and the applicable international conventions require nothing less.

In May 2007, the Commission initiated a public consultation with the launch of background and consultation papers both entitled *Human Rights and Rental Housing in Ontario*. The background paper described in detail the Commission's research into the legal, social and international context for the discussion of rental housing in Ontario. The consultation paper highlighted the key issues from the background paper and set out a series of questions to guide the Commission's process of gathering feedback.

Beginning in June 2007, the Commission held public and private meetings in four cities across the province to hear about the extent of the problems and to identify potential solutions. Around 130 organizations and an additional 24 individuals participated in afternoon consultation meetings in Kitchener-Waterloo, Ottawa, Sudbury and Toronto, and over 100 people participated in evening sessions in these locations. Hundreds more participated in other events including sessions held by COSTI, the Ontario Federation of Students, the Ontario Municipal Social Services Association (OMSSA), the Ontario Non-Profit Housing Association (ONPHA) and the Co-operative Housing Federation of Canada. The Commission continued to meet with organizations, including the Federation of Rental-Housing Providers (FRPO), and individuals throughout the fall of 2007.

As well, between May and September 2007, the Commission received written submissions from over 60 organizations representing a variety of perspectives including those of tenant advocates and housing providers. Many of the submissions prepared by community organizations were based on input from meetings attended by community members, tenants or people working in the housing field, such as property managers or service managers. The Commission appreciates the efforts these agencies have taken to have their submissions

reflect a broad range of experiences in their communities. In addition, almost 100 individuals sent us their comments or used our online surveys to share their experiences and concerns.

All of this material has been considered in writing this report and will be taken into account in preparing the Commission's policy on human rights and rental housing. It should be noted, however, that many housing providers did not comment on the breadth of issues raised in the consultation paper. The key issues of concern for the majority of housing providers who contributed to the consultation were tenant screening (section 4.2), the duty to accommodate (section 4.3) and the barriers to developing affordable housing posed by NIMBY opposition (section 5.5).

### **3. HOUSING AS A HUMAN RIGHT**

Adequate housing is essential to one's sense of dignity, safety, inclusion and ability to contribute to the fabric of our neighbourhoods and societies.<sup>3</sup> As the Commission heard in this consultation, without appropriate housing it is often not possible to get and keep employment, to recover from mental illness or other disabilities, to integrate into the community, to escape physical or emotional violence or to keep custody of children.

The right to shelter, to have one's own bed to sleep in, a roof over one's head, a place where one's person and possessions are safe is a human right. It is essential to the preservation of one's dignity and health – their own space in the world (Toronto Christian Resource Centre).

Many of us can take for granted the security that an adequate and affordable roof over our heads provides. But, this is not the reality in Canada and in Ontario for many tenants. The Commission heard widespread views that it is Ontario's most vulnerable families and individuals who bear the human toll of inadequacies in the province's rental housing sector. The connections between housing and human rights protected under the *Code* were brought out in submissions by housing providers, tenant organizations and others and have been recognized in other reports.<sup>4</sup> The racialization of poverty and the overlaps between mental illness and homelessness were raised repeatedly throughout the consultation.

The workings of the current provincial rental housing system must be considered and evaluated in light of current statistics. For example:

- In 2006, almost 20% of the total population in Canada was born outside of Canada<sup>5</sup> of whom 70.2% had a mother tongue other than English or French, an increase from 67.5% in 2001.<sup>6</sup>
- Ontario is the province of choice for recent immigrants with more than 55% of all new arrivals settling here over the past five years<sup>7</sup> (Metro Toronto Chinese & Southeast Asian Legal Clinic – MTCSALC).

- In general, around 10% of the total population had an after-tax income below Statistics Canada's low income cut off between 2001 – 2005, but 33 – 43% of female headed lone-parent families, 30% of single people and 34% of single people over age 65 were considered to be low income.<sup>8</sup>
- One in five Ontarians will experience a mental illness in their lifetime. For 2 – 3% of Ontarians, the mental illness will be severe and persistent, affecting their ability to live and work in the community (Canadian Mental Health Association, Ontario – CMHA, Ontario).
- Among renter households, core housing need<sup>9</sup> is 42% for lone parents, 38% for Aboriginal people and 36% for seniors over 65 or living alone<sup>10</sup> (Advocacy Centre for Tenants Ontario – ACTO).

### 3.1. International concerns

International conventions are not just part of the background context for consideration of rental housing and the *Code*. They are intrinsic to our understanding of the rights of Ontario's most vulnerable tenants. For this reason, relevant international obligations and recommendations of United Nations committees are referred to throughout this report and briefly in this section.

A wide range of consultees expressed significant concern that people protected under the *Code* are disproportionately excluded from suitable rental housing despite international protections. These views are not surprising given that the housing situation in Canada has been labelled “a national emergency” by the United Nations in its most recent periodic review of Canada's compliance with the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and a “national crisis” by the United Nations' Special Rapporteur on adequate housing.<sup>11</sup>

Canada has recognized that adequate housing is a fundamental human right by ratifying the *ICESCR* and has agreed to take appropriate steps towards realizing the rights set out in it.<sup>12</sup> However, a number of consultees expressed the view that much more is required. For example, the Ontario Association of Social Workers (OASW) said that the *ICESCR* requires progressive steps towards solving the existing housing problems such as a housing strategy, reasonable targets, allocating sufficient funds, improving rental housing options and measures to address discrimination.

Other consultees expressed disappointment that concerns raised by the Committee on Economic, Social and Cultural Rights (CESCR) about disparities between Aboriginal people and the rest of the population in terms of housing and the barriers to the enjoyment of rights under the *ICESCR* by African-Canadians<sup>13</sup> have not been addressed. Many submissions referred to the continued apprehension or voluntary relinquishment of children to children's aid societies for reasons relating to housing as being inconsistent with international obligations

and recommendations.<sup>14</sup> This is discussed further in section 5.2 “Adequate and affordable housing.”

It was pointed out that other UN human rights bodies have raised similar concerns. For example, the Committee on the Rights of the Child shared the CESCR’s concern about homelessness as a national disaster,<sup>15</sup> and the Committee on the Elimination of Discrimination against Women noted that efforts to provide social housing for women with low incomes and female lone parents might be inadequate.<sup>16</sup> The UN Human Rights Committee has also expressed concern about people with mental illnesses being detained in institutions because of the lack of supportive housing.<sup>17</sup>

The Centre for Equality Rights in Accommodation and Social Rights Advocacy Centre (CERA/SRAC) suggested that international concern about violations of the right to housing in Canada are growing because the violations have been the result of deliberate actions by Canadian governments, such as cut-backs to social assistance and social housing, refusals to take any appropriate measures to address the problem, and failures by many institutions, including human rights commissions, to address homelessness as a violation of human rights. Many consultees expressed fear that the internationally recognized crisis in housing will worsen due to the lack of a national housing program, cuts to social programs that address inequality<sup>18</sup> and the growth of poverty.

## **3.2. Housing rights and the Code**

In Ontario, section 2 of the *Code* recognizes the right to equal treatment with respect to the occupancy of accommodation – a right that is to be interpreted in light of international covenants that Canada has signed or ratified. CERA said that, applying a substantive equality approach, section 2 can be interpreted as providing protection against discriminatory treatment in applying for and living in housing, and a right to adequate housing without discrimination on the listed grounds. This interpretation would, according to CERA, ensure effective domestic remedies to violations of the right to adequate housing, in fulfillment of obligations under international law in housing.

It is the Commission’s position that many of the problems in rental housing and access to housing identified in this report are symptoms of systemic human rights violations and a prevalent lack of awareness that can, and must be, addressed without further delay. The *Code* provides a range of tools to address violations of housing rights and situations affecting access to housing because of *Code* grounds, even if section 2 does not explicitly create a freestanding right to housing.

Section 9 of the *Code* prohibits both direct and indirect infringements of the rights in Part I of *Code*, which includes section 2. This means that applications may be



filed, and violations of the *Code* may be found, where actions indirectly violate section 2. An example is when a political leader makes a statement based on discriminatory stereotypes that results in denial of access to housing for groups or individuals because of *Code* grounds.

In addition, section 11 provides that a right under Part I of the *Code* is infringed where persons identified by a *Code* ground are excluded because of neutral rules or requirements that are not reasonable and *bona fide* in the circumstances. This determination requires a consideration of whether the needs of the group can be accommodated without undue hardship.<sup>19</sup> This means that applications may be filed against a wide range of responding parties, including government and housing providers, based on the combination of sections 2, 9 and 11. For example, applications may be filed against government where shelter allowances are so low that people in receipt of social assistance are unable to afford housing. It could also be argued that this is a violation of section 1 of the *Code*, which prohibits discrimination in services. Similarly, arguments may be made that section 2 is violated when the denial of services by a support-service provider results in a person's loss of housing because they are viewed as being unable to live independently.

These kinds of situations give rise to serious human rights issues that the Commission will consider as it works towards developing its policy on human rights and rental housing and fulfilling its new mandate.

## **4. HOUSING DISCRIMINATION AND THE INDIVIDUAL**

This section discusses the most significant rental housing issues affecting individual tenants and housing providers. Many of the experiences of discrimination and harassment, tenant screening and accommodation are intrinsically linked to the systemic elements discussed in section 5. For example, the individual barriers to housing experienced by tenants in receipt of social assistance are, in many cases, linked to the broader societal issues of inadequate income levels and poverty. However, this section focuses attention on the human interactions, actions and inactions that are at the heart of human rights in rental housing.

### **4.1. Highlighting discrimination based on specific *Code* grounds**

The Commission recognizes that most landlords and housing providers are anxious to comply with the *Code* and work hard to meet the needs of their tenants. However, as the Commission heard in this consultation, for some tenants, discrimination in housing in Ontario is not an unusual occurrence. As

was noted in a recent decision of the Human Rights Tribunal of Ontario, “[d]iscrimination relating to a person’s home is particularly egregious.”<sup>20</sup> Discrimination and harassment may arise when tenants respond to advertisements for rental units, when their applications for tenancy are reviewed and processed, during occupancy, and, in some cases, when the tenancy relationship ends. In housing, as with employment or other social areas, persons in positions of power may be held responsible if they condone or further discrimination that has already occurred and if they fail to investigate a complaint of discrimination.<sup>21</sup>

The information gathered in the consultation shows that a variety of discriminatory stereotypes and biases exist in today’s rental market. When there is an imbalance in bargaining power, such as that between landlords and tenants, there is potential for these kinds of stereotypes to give rise to discriminatory treatment. The lack of affordable and adequate housing, when combined with overt and subtle discrimination in housing, means that many people protected by the *Code* are excluded from the housing market, forced to pay higher rents than they can actually afford, or relegated to poor quality housing options.

The submissions of tenants and their advocates indicated that many Ontarians expect to experience discrimination when seeking and occupying rental units, even when they are assisted by professionals and community workers. As one tenant advocate noted, the search for a rental unit for a lone mother on social assistance is essentially a search for a landlord or property manager willing to rent to her.

The Commission heard repeatedly that often the involvement of workers from community agencies actually serves as a trigger for discrimination. In some of these cases, it appears that the worker’s organization or role is viewed as an indication of the tenant’s membership in a group protected under the *Code*. The Algoma Community Legal Clinic gave an example of landlords screening out prospective Aboriginal tenants who were being helped by an Aboriginal homeless program. A front-line worker indicated that landlords did not respond to his calls when he called on his office line. However, if he called from a phone that showed only “private” through caller-identification, the phone would be answered. Similarly, the involvement of social service workers or medical practitioners helping people with mental illnesses to obtain housing may cause some landlords to incorrectly assume the person will be a problem and refuse tenancy (Psychiatric Patient Advocacy Office – PPAO).

This section highlights situations that arise in relation to particular grounds such as sex, disability or race. As with past consultations, a major theme in this consultation was the intersecting impacts of multiple grounds of discrimination. The particular forms of disadvantage experienced by people are based on the combination of their identities – a racialized lone mother’s experience in seeking

and obtaining quality housing differs from that of a gay couple with disabilities. In the past, the Commission has recognized the importance of applying an intersectional approach to complaints of discrimination.<sup>22</sup>

### ***Discrimination based on sex***

Women's experiences of housing discrimination are frequently related to their sex, and are often related to other characteristics such as their family or marital status, their race or race-related characteristics, age or disability. CERA/SRAC, with the National Women's Working Group, said that although low-income women experience the most severe housing disadvantage, their experience of the housing and homelessness crisis tends to be less visible than that of other groups. They listed the following factors, among others, as having contributed to the inadequate housing conditions and homelessness experienced by women:

- poverty – single mothers, young women and racialized women are disproportionately poor
- systemic discrimination and inequality in accessing and retaining housing, income support, employment and education programs
- the unjust application of regulations, laws and policies related to income support and housing programs
- women's over-representation as sole-support households
- lack of social supports to offset the burden women experience in care giving roles
- a shortage of affordable housing
- social exclusion
- lack of a safe living environment.

Many consultees commented on the power imbalance between landlords and tenants who are women with low incomes. The Commission heard that this power imbalance may result in inappropriate behaviour by landlords and property managers, particularly when women are at risk of losing their tenancy due to financial difficulty or a personal crisis. For example, the Commission was told that some landlords may seek sexual favours from low-income women in lieu of rent if they have fallen into arrears, to prevent eviction or if they require maintenance services. This can make an affordable and otherwise adequate rental unit uninhabitable. As the Commission heard, for some women, homelessness is a preferable alternative to this kind of infringement of fundamental human rights.

Women living in subsidized housing in certain areas of Kingston voluntarily leave their rent-g geared-to-income units and stay in homeless shelters for months on end because of concerns about their safety and sexual harassment (Kingston Community Legal Clinic – KCLC).

After the breakdown of a relationship, women may be disadvantaged in obtaining a rental unit on their own without a credit rating or landlord references. The Commission also heard that women leaving or returning to situations of domestic violence are at increased risk of having their children removed by child welfare

authorities because of housing that is unsuitable due to violence or poor living conditions. See also section 5.2 “Adequate and affordable housing.”

The Commission was concerned to hear that the lack of affordable housing and assistance prevents some women from leaving abusive relationships.<sup>23</sup> The Commission was also told about the limited availability of shelter options for women with disabilities trying to leave abusive situations. CERA recently called 10 women’s shelters and found that none were fully accessible and two were only partly accessible. This means that for women with disabilities, access to temporary shelter or transitional housing may not be a viable alternative. This denies them some of the benefits associated with such options<sup>24</sup> and increases their already extreme vulnerability as women trying to leave abusive relationships.

Consultees reported that discrimination against, and stereotypes about, women who have experienced domestic violence are also factors affecting the availability of housing.<sup>25</sup> One legal clinic indicated that housing providers increasingly view women who have experienced violence as “damaged” and likely to create problems in housing services because of returning partners and troubled children.

For Aboriginal women, who experience higher rates of violence compared to non-Aboriginal women,<sup>26</sup> the situation is particularly bleak. The lack of adequate and affordable housing, financial assistance and social supports – coupled with other intersecting grounds – leaves many Aboriginal women with no choice but to return to their abusers. The Ontario Federation of Indian Friendship Centres (OFIFC) told the Commission that some women turn to the homes of family or friends, but may be subject to unwarranted intervention of child welfare authorities due to perceived overcrowding reported by neighbours or housing providers. The Commission was told that the combination of these factors results in the children of Aboriginal women being apprehended at a much higher rate than the children of other women.

Although women are particularly at risk of housing discrimination due to their low social and economic status, the Commission also heard about instances in which men are differentially treated because of their sex. For example, the Housing Help Centre described a case in which a man seeking housing was asked to provide custody papers for his children because he was a man. Women were not asked to provide such proof.

### ***Transphobia and discrimination based on gender identity***

Under the current *Code*, claims based on gender identity may be filed based on the ground of sex, and calls have been made for its inclusion in the *Code* as a separate ground. See also section 4.5 “Enforcing housing rights.”

People who are transgendered may be exposed to stereotypes, harassment or demeaning comments. These can affect their experience in accessing housing and may result in the outright denial of a rental application. One participant in the consultation described her experience in trying to find accommodation in a student residence following her transition from male to female.

In the spring of 2000, I needed to look for rental accommodation, and there were three choices: there was mixed, there was male, and there was female. So, being a woman, I phoned up a few places looking for female accommodation. The first phone call, I identified as a woman, and I was told by the person renting that indeed, I wasn't a woman. I was very frustrated, so I decided to phone the next number on my list. I phoned them and identified myself as a woman, and they told me the apartment was already taken.

Transgendered people may be exposed to comments or conduct that poison their environment and undermine their dignity during tenancy. For example, one consultee described having been told that she was “lumbering like a man” by one landlord and referred to as “that” rather than as a woman by another. This consultee said “I worry every time I look for housing, about what kind of response I'm going to get, what kind of experience I'm going to have.”

### ***Family status and marital status***

CERA/SRAC/NWWG said that although men and women are protected under the ground of family status, lone mothers and especially women who are fleeing abuse and domestic violence are most affected by discrimination based on family status.

Consultees raised concerns about advertisements for “adult only” buildings and units that are described as “not suitable for children,” or suitable for “a single person or couple” or “professional people.” All of these may be euphemisms used to exclude families with children. These kinds of ads are not permitted under the *Code*.<sup>27</sup> Yet, they continue to exist and families with children are discouraged from applying for housing or are denied access to housing opportunities.

Families with children may be turned away, particularly when applying to small owner-operated apartment buildings or second units. The Commission heard that landlords commonly say that the apartment is “not appropriate” for a family with children or that it is “too small.” In some cases, this may be based on assumptions about children's noise or damage to the unit. However, the normal noise and activities of children should not be used as reasons to exclude them,

and their families, from housing.<sup>28</sup> A lone mother with a toddler stated that although she may be told that there are no units available, when she gets her friends to call, there are.

Lone mothers with older children, particularly teens and pre-teens, may face additional barriers in trying to obtain shelter or permanent housing. One woman noted that after she and her husband separated, she had difficulty renting housing because she had two teenage boys and a younger son and a credit history and landlord references that were affected by the circumstances of the marriage breakdown. Yet, she could not get into a shelter because they were full, or because her family was ineligible as one son was over age 16. She expressed her fears of homelessness due to lack of other options to house her children.

Many submissions drew the Commission's attention to the prevalent sexual exploitation of tenants who are lone mothers, an issue discussed in the section "Discrimination based on sex." The Commission also heard about situations in which families, particularly those headed solely by young women, were subjected to unsanitary or unsuitable living conditions.

Consultees indicated that some landlords still use restrictive definitions of family to be able to evict existing tenants and increase the rents. This was said to result from vacancy decontrol under the *Residential Tenancies Act (RTA)*.<sup>29</sup> The Ministry of Municipal Affairs and Housing (MMAH) noted that the definition of tenant in the *RTA* has been expanded to include spouses, to prevent potential evictions in cases where the original tenant dies or leaves. However, this provision does not apply to buildings with three or fewer units in which the landlord lives. In addition, one consultee noted that definition of tenant still affects other family members, such as parents, who may not be recognized by landlords as "authorized occupants."

Families with children may be told that they have to rent an apartment with a specific number of bedrooms to accommodate the size of the family. This affects both small and large families. As is noted further in section 4.2. "Tenant screening practices," such policies have the effect of limiting access for families with children to rental units. The Commission was told a number of times that tenants feel that they need to lie about their families to qualify for or find a decent apartment, but are scared to do so because of the fear of eviction when their children are discovered. In some cases, when the landlord becomes aware of the existence of these children, they force the tenants to pay extra rent (MTCSALC). Similarly, tenants may face rent increases or eviction when additional family members move into the rental unit even if municipal occupancy standards have not been violated (The Community Legal Clinic of York Region).

Guest policies under the *Social Housing Reform Act (SHRA)* were also described as having a disproportionate impact on lone mothers. Section 21(3) of the *SHRA* allows housing providers to establish rules for the temporary accommodation of

guests in its rent-g geared-to-income units. Consultees told the Commission that these rules seem to be aimed at “boyfriends” or partners whose incomes were not considered by the housing provider when calculating the subsidy amount. The Commission was told that strict enforcement of these policies can have far-reaching effects on the ability of tenants to maintain their privacy and lead normal lives while at the same time maintaining their housing. If the guest is deemed to be an illegal occupant, the tenant’s subsidy can be revoked and the tenant may be evicted. The Hamilton Mountain and Community Legal Clinic provided this example:

In one case at this office, a single mother of four children relied on her ex-husband to babysit while she attended the hospital with her four-year-old undergoing cancer treatment. She was repeatedly requested to provide proof that he was not staying overnight. Despite supplying affidavits and proof of his residency elsewhere, the provider removed her subsidy and brought an application to the housing tribunal to evict her family on the basis of sightings by neighbours and the superintendent of his alleged overnight stays. When the so-called evidence was challenged, the matter was withdrawn, but not before serious suffering was inflicted on the entire family over the extended period.

The Commission heard that Aboriginal people, and in particular women, are frequently discriminated against in rental housing because of their family status. This arises from stereotyping and a lack of understanding of Aboriginal cultural and social norms and practices, familial and kinship ties, and the importance of extended families (OFIFC). Concerns were raised that the definition of “family status” in the *Code* poses a significant barrier for Aboriginal families in the context of obtaining rental housing. This is because “family status” as defined does not include extended families, kinship networks or alternative family structures that are very common, and the social and cultural norm in Aboriginal cultures and communities. Finally, it was noted that single people, particularly single Aboriginal males, have difficulty obtaining affordable housing. These difficulties are heightened for single Aboriginal people with mental illnesses, addictions or who are transitioning out of homelessness.

Families of people with mental illnesses also suffer from stigma and discrimination when applying for and occupying housing (People Advocating for Change through Empowerment – PACE). As a result, they may conceal mental illness or addiction problems and face these issues in isolation because they have distanced themselves from friends, family and the community (Ontario Federation of Community Mental Health and Addiction Programs – OFCMHAP). Parents of children with mental disabilities may be under particular scrutiny from neighbours and landlords with regard to noise or other manifestations of their children’s disabilities. In some cases, these kinds of issues can lead to eviction.

### ***Criminal records and record of offences***

Although “record of offences” is not currently a prohibited ground of discrimination in housing, a number of important human rights issues were raised in the consultation. Submissions relating to *Code* amendments are discussed in section 4.5. “Enforcing housing rights.”

About 10% of the adult population has a criminal record.<sup>30</sup> Consultees noted that due to discrimination, historical disadvantage and other factors, there may be links between criminal records and prohibited grounds of discrimination, such as disability, race or receipt of social assistance. For example, Aboriginal people comprise 16.7% of federally sentenced adult offenders but only 2.7 of the Canadian adult population.<sup>31</sup> Conflict with the law may be associated with the racialization of poverty and the criminalization of poverty (John Howard Society of Toronto). For example, the Commission was told that people with low incomes, including people on social assistance, tend to be viewed more reprehensively and receive more severe criminal sanctions than wealthy people who have similarly broken the law.<sup>32</sup>

The Commission heard that differential treatment based on one’s criminal history is widespread and yet very difficult to prove. In many cases, the unit in question may suddenly become “unavailable” when the landlord finds out about a prospective tenant’s criminal record through a criminal record check or a discussion. In other cases, prospective tenants walk away from a suitable unit when they find out that a criminal check is a required condition of tenancy. When successful in obtaining a unit, some people with criminal records are told that they will be watched and more closely scrutinized than other tenants. These kinds of experiences may also arise from the intersection of a criminal record and other grounds of discrimination such as being in receipt of social assistance and/or being racialized.

Some consultees raised concerns about blanket policies that restrict or ban people with criminal records from housing, such as those which exist in various parts of the United States. One consultee notes that: “if such a situation were to become a reality here in this province and throughout Canada, our hopes of housing this very vulnerable population would be lost.” A legal clinic drew the Commission’s attention to an example of a regional crime reduction project in Ontario between a social housing provider and a local police force, which could result in the exclusion of people with criminal records.

CERA pointed out that such policies will result in human rights violations for individuals who have addictions, or other disabilities such as mental illness or cognitive disabilities, if housing providers are not sensitive to the individual circumstances of each prospective tenant. “If a person’s disability was a contributing factor to criminal activity, that person should not be refused housing



for having a criminal record unless the housing provider can prove that providing them with accommodation would pose undue hardship.”

ARCH Disability Law Centre (ARCH) noted that adding a “crime free addendum” to a tenant’s lease has a disproportionate impact on people with mental health disabilities, as related police record checks would identify detentions under the *Mental Health Act*.<sup>33</sup> Similar concerns were raised about the impact of safety-oriented policies on racialized families.

As part of the “guns and gangs” initiatives by the Toronto Police Service, members of certain racialized communities, and in particular the African Canadian community, have been made targets of police raids which result in charges being laid. The family members of these individuals are then being given eviction notices by [the social housing provider] on the ground of “illegal activities” by the tenants. This “law and order” and “zero tolerance” approach results in hardship to many families” (MTCALC).

### ***Age discrimination***

The Commission heard about examples of discrimination experienced by people at both ends of the age spectrum.

The Commission heard that discrimination experienced by young people is usually experienced on the intersection of grounds such as age, race, receipt of public assistance, family and/or marital status and disability, particularly mental illness. They also face challenges arising from the lack of safe and affordable housing in various communities across the province. Due to discrimination and other barriers to housing, young people may be drawn to high-risk neighbourhoods, return to abusive family situations, become homeless or pay high fees to private companies that will find them housing. Rooming houses provide a common alternative. However, the youth who live in them, in particular the young women, are vulnerable to human rights violations.

Young people are frequently stereotyped as being irresponsible, having too many parties, not paying the rent or destroying the property, and consequently have a difficult time finding rental housing (Housing Help Centre). The Commission heard that young people may be told that they have to be 18 years of age to enter into tenancy agreements.<sup>34</sup> They may also be subjected to tenant screening measures that are not required of others – such as direct payments of rent. See also section 4.2. “Tenant screening practices.”

The Commission was told that Aboriginal youth face tremendous difficulties obtaining housing due to the intersection of age discrimination, racism, income and other factors. These youth may not have landlord or employer references, credit histories and guarantors. Children’s aid societies noted that the requirement that youth leave care at age 18 means that Aboriginal youth may be forced into independent living when they are not fully ready. The Commission was told that when safe and affordable housing is not available, these vulnerable

youth end up renting units in buildings where criminal activities including drug use and dealing are commonplace. This can hamper efforts to overcome addictions or push them to expensive units that leave them with hardly any money for other necessities.

Young lone parents face barriers to housing such as being on social assistance, the lack of integrated support, and not having job, housing or credit histories in addition to experiencing stigma because they are young and have children (Young Parents No Fixed Address). In some cases, the fact that they have children and are young leads to the perception that they have made poor choices and would be unable to maintain a household (Jessie's Centre for Teenagers). The Commission was told that the combination of discrimination, inexperience and lack of resources can affect young parents' ability to provide stable and suitable living conditions for their children. For example, landlords may enter their units without giving notice, make unwelcome advances and refuse to make necessary repairs to the property. One clinic described an experience of stereotyping at a hearing before the Landlord and Tenant Board in which a young lone mother, who was crying because she was being evicted over \$400 in rent arrears, was asked by the adjudicator, "Why are you sniffing, are you on drugs?"

Tenant advocates noted that older tenants are often denied housing because landlords perceive them to be at greater risk of injury and death or unable to pay and carry out proper maintenance. Difficulties obtaining accommodation to allow tenants to continue to live independently in their units were raised by a number of consultees as being a major issue of concern to older tenants. Some social housing providers sought greater flexibility in setting eligibility for seniors' housing based on needs and preferences rather than the threshold of age 65 set out in section 15 of the *Code*.<sup>35</sup>

The Commission was told that vacancy decontrol may increase the vulnerability of older tenants to eviction as they may be viewed as limiting the landlords' ability to raise the rents. One tenant advocate described attending a landlord and property manager's conference in which a speaker described seniors as a huge problem because "the only way you usually 'get rid of them' is 'to the seniors' home or to the funeral home,' which was responded to by a very raucous round of laughter from most of the landlords and property managers in attendance."

Throughout the consultation, the Commission heard about barriers to access and the lack of accommodation to meet the needs of older people with disabilities, including hearing loss, mobility issues and mental illnesses. These are discussed in section 4.3. "Housing and the duty to accommodate."<sup>36</sup>

### ***Disability (including mental illness)***

The *Code* ground of disability is broadly interpreted. It protects people who are perceived to have disabilities and people with disabilities such as mental illnesses, physical disabilities, chemical sensitivities and a range of other

conditions that expose people to unequal treatment in housing and other social areas. The protections in the *Code* overlap with the *United Nations' Convention on the Rights of Persons with Disabilities*,<sup>37</sup> which requires signatories, including Canada, to take appropriate measures to ensure the independence and full participation of people with disabilities in housing. When people with disabilities are discriminated against, or excluded from housing, this leads to further exclusion, isolation and stereotyping – all of which can lead to institutionalization, homelessness and further discrimination.

Discriminatory advertising was a significant concern for persons with disabilities. Phrases in advertisements such as “suits a working person” may indicate that people who receive social assistance or are unable to work due to disabilities, or other *Code* grounds, are not welcome or need not apply. One participant in the consultation described what happened on two occasions when he called in response to such ads. On disclosing that he received benefits through the Ontario Disability Support Program (ODSP), one landlord said that he had made a mistake and the unit had already been rented and another implied that he was somehow unsuitable for the unit.

The Commission heard that, along with the lack of affordable housing, stigma and discrimination are major factors for some tenants with disabilities. For example, a third of people living with HIV/AIDS report that they have experienced discrimination in trying to access housing and 20% have experienced stigma.<sup>38</sup> The Commission also heard that people with disabilities may be screened out of tenant selection processes because of concerns about having to meet the duty to accommodate. In some cases, this is explicitly stated (KCLC). In other cases, the reasons for turning away a prospective tenant with a disability, such as hearing loss, are not said up front. But, it is easier to rent to a person who is perceived as not requiring accommodation (Canadian Hearing Society). Further issues relating to accommodation are discussed in section 4.3. “Housing and the duty to accommodate.”

Submissions and discussions about discrimination based on mental illness<sup>39</sup> formed a significant portion of this consultation. People with mental illnesses are protected under the *Code* ground of disability, and the principles set out in the Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*<sup>40</sup> apply. For example, the principles of respect for dignity, individualized accommodation and integration and full participation must be extended to people with mental illness in their housing.

People with mental illnesses may have difficulty acknowledging their own mental illness, and in some cases their disabilities may interfere with their ability to take care of themselves and their living spaces (PACE). Lack of knowledge of housing services and how to access them, intimidation and fear of being misunderstood can prevent people with mental illnesses from getting the help they need. These

kinds of issues pose difficulties for housing providers, many of whom make their best efforts to comply with the *Code*.

While many people with mental illnesses successfully live in the community, the Commission heard that other people with mental illnesses rely on subsidized social housing. Supportive housing for people with mental illness in this context may require social work, nursing or intensive case management. However, concerns were raised about the lack of appropriate supportive housing for people with mental health disabilities and physical disabilities. It was also noted that the closure of inpatient hospital programs places people with mental illnesses and addictions in unsafe living conditions that interfere with their treatment and increase their risk of relapse.

The power imbalance that exists between landlords and tenants may be exacerbated where the tenant is a person with a mental illness. This, and prevailing stigma and misinformation, may lead to discrimination and harassment against people with mental illnesses. For example, the Commission heard of situations in which landlords have denied housing to people with mental illnesses once their mental health status is disclosed. In other cases, people with mental illnesses are subjected to additional requirements, such as providing a guarantor, that are not asked of other tenants, as a condition of being able to rent the unit. See also section 4.2 “Tenant screening practices.”

Once living in rental units, the Commission heard that people with mental illnesses continue to be at risk of discrimination and harassment. For example, some landlords may harass tenants or fail to address harassment between tenants, ignore valid complaints and permit substandard living conditions for people with mental illness due to negative attitudes and stereotypes. When landlords exercise their right to enter a tenant’s unit,<sup>41</sup> tenants with mental illness may experience harassment if the landlord imposes his or her own values on the tenant (Psychiatric Patients’ Advocacy Office – PPAO). Conversely, tenants with mental illnesses may feel hesitant to raise legitimate concerns about neglect or disrepair of their rental units because of financial and other constraints on their ability to move out.

People with mental illnesses combined with other grounds face particular challenges. For example, PPAO said that access to housing is “exponentially difficult” for a female with mental illness who receives social assistance and is a member of a religious minority. Access to appropriate supports and services is a major challenge for people with mental illness along with other disabilities, such as developmental disabilities or drug dependencies. Without such supports, they may be denied housing or evicted for not following housing rules (PACE).

Youth with mental illness face particular challenges due to the combination of their relative inexperience in the rental market and their disabilities. The

Commission heard that landlords may be “overly watchful” or “unsympathetic” and that this can make it difficult for them to maintain their homes.

There is little tolerance or empathy for behaviours due to illness or mistakes due to inexperience. Landlords have been quick to evict, or to take advantage of their inexperience or lack of knowledge of their rights by simply ordering them to leave.” (CAS, London & Middlesex).

The Commission heard about the unique circumstances of Aboriginal people who also have mental illnesses or addictions.

The impact of colonization, the legacy of Indian Residential Schools and a number of resulting factors has led to higher rates of addictions, substance abuse and mental illness among the Aboriginal population. Aboriginal people who suffer from addictions and/or mental illness have a particular difficulty obtaining social and rental housing and are often at a great risk of homelessness (OFIFC).

People with mental illnesses who have been involved in the criminal justice system are at a particular disadvantage in obtaining and keeping suitable housing. Some people get stuck in the hospital or in substandard housing because they are unable to obtain housing from community agencies. The Commission heard that these barriers to housing persist even if it has been many years since the offence, and even if the Ontario Review Board has cleared the person to live in the community (PPAO).

### ***Race and race-related grounds***

Stereotypes and biases based on race and race-related grounds create significant barriers in housing. The Housing Help Centre indicated that “[p]eople of African descent have difficulty finding housing because landlords believe they are criminals or have too many children.” The Commission was told that other stereotypes exist, such as that African Canadian tenants are more likely to be involved with drugs or be violent and that racialized people are dirty. A recent decision of the Human Rights Tribunal of Ontario makes it clear that housing providers may be found liable for making, or failing to address, comments based on these kinds of discriminatory stereotypes, and for acting in accordance with such stereotypes.<sup>42</sup>

In the course of the consultation, the Commission heard a number of examples of situations in which racialized tenants experienced differential treatment because of race.<sup>43</sup> For example, a South Asian man who identifies his skin colour as Brown described his personal experience of discrimination attempting to view an apartment in a predominantly White area:

... [when] I called to book an appointment ... I used a Canadian accent and the superintendent gave me the interview and was quite cordial and even

went the extra mile. Once I showed up for the viewing with my family, the superintendent was making various excuses which seemed quite unusual at that particular time. He claimed that the apartment was already rented out. Later in the week I had my White friend call and go in for a viewing and it turned out to be the same apartment that I was supposed to view. My White friend was successful in viewing and applying for the apartment.

This Ontarian's experiences were reflected by others throughout the consultation. The Commission heard that in many cases, the apartment mysteriously becomes "rented," "off the market," in use by a family member or otherwise unavailable once a prospective tenant is identified as racialized. This kind of racial discrimination in the rental market may be detected through paired testing research.<sup>44</sup> However, CERA pointed out that race cases are difficult to prove because few landlords will say directly that they will not rent to someone based on their race, and that the evidence to show that this is the case is usually circumstantial. It also explained that racism can be difficult to identify because it is often systemic in nature – existing in the very structures of the housing market.

Some racialized tenants may experience discrimination and harassment while occupying rental housing. For example, tenants stated that their requests for repairs and upkeep of the rental unit would be denied while those of non-racialized tenants would be met.

The topic of "ghettoization" and the segregation of African Canadian people, or other racialized groups, in subsidized housing communities and in the private rental market generated much discussion. Some expressed the view that how social housing is allocated results in racialized people being segregated and stigmatized in certain social housing projects. Others responded that residents choose which neighbourhood or building they want to live in, with buildings mirroring the makeup of the communities they are in. OFIFC pinpointed discrimination against Aboriginal people and the lack of affordable housing as critical factors leading to ghettoization for this population. When seeking housing, the Commission was told that Aboriginal people are referred to specific housing providers and neighbourhoods where the quality of the housing is lower but landlords are willing to rent to them.

The Commission heard that landlords may deny Aboriginal people housing because of discriminatory stereotypes about them. For example, the Housing Help Centre, and other consultees, indicated that common stereotypes are that they drink or do drugs, that they are all on Ontario Works (OW), or that they will not pay their rent. The Commission also heard that Aboriginal women may be asked discriminatory questions such as whether they had children, if their family would be visiting or if they were on welfare.

Some Aboriginal people have difficulty accessing housing and related social services because of language barriers and a lack of translators, particularly in

Northern Ontario. When applying for rental units in the private market, Aboriginal people may be asked to provide written references, a signed lease and significant deposits to secure the rental when these are not required of others. Further concerns were raised about harassment of Aboriginal tenants, particularly tenants who are Aboriginal women, in the form of racist remarks, stereotyping and sexual harassment by the landlord or neighbours. The lack of maintenance and repairs was also an issue for Aboriginal tenants.

Immigrants and newcomers are very marginalized in our society, with people who have newly arrived being more likely to be unemployed or under-employed, living in poverty and in rental accommodations (MTCSALC). Newcomers are particularly at risk of discrimination precisely because they are new and viewed as being unlikely to know their rights.

We have seen cases in which the same apartment building applies different rents to different tenants depending on how well the tenants know their own rights, or how new they are to Canada. As a result, immigrants are vulnerable to exploitation by unscrupulous landlords and are sometimes unable to avail themselves of legal remedy even when one exists (MTCSALC).

CERA indicated that it receives more calls from racialized newcomers compared to other newcomers, since they experience discrimination based on immigrant status as it intersects with race and other race-related characteristics. For example, the Commission heard that a landlord may require co-signors of all newcomers, but will only be concerned about “cooking smells” and “extended family” for South Asian or African newcomers. This results in additional barriers for racialized newcomers to overcome in trying to secure housing. Yet, it was noted that discrimination based on ancestry, place of origin, ethnic origin and citizenship is under-reported because these communities may not have the resources, financial or otherwise, to fight discrimination or are unaware of their legal rights. Families without permanent residency or refugee status fear deportation and are reluctant to raise complaints against landlords.

Newcomers and immigrants may be exposed to stereotypes – for example that they “won’t pay their rent, are sponging off the system, are terrorists, have too many children, or are violent” (Housing Help Centre). The most common forms of discrimination against newcomers and immigrants identified in the consultation are requirements that they obtain guarantors with substantial incomes or pre-pay 4 – 12 months’ rent as a condition of being able to rent a unit. These practices continue despite a decision of the Board of Inquiry that these policies disadvantage newcomers to Canada, discriminate because of citizenship and place of origin and are illegal under the *Code*.<sup>45</sup> See also section 4.2. “Tenant screening practices.”

Concerns were raised about section 5(i) of the *Residential Tenancies Act (RTA)* which provides that the *RTA* does not apply to “living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located.” Such units provide a valuable source of income for homeowners and affordable housing for tenants. However, the Commission heard that newcomers and immigrants tend to live in accommodation where they share facilities with the landlord and are disproportionately excluded from the protections in the *RTA* (MTCSALC). Similar concerns about the exemption in the *Code* for shared accommodation are discussed in section 4.5. “Enforcing housing rights.”

In the roundtable sessions, the Commission heard that when newcomers are charged more than others, the only way they can afford the rent is to have many members of an extended family live in what are often small housing units. This results in overcrowding and sometimes exposes them to further discrimination relating to occupancy policies. For example, CERA told the Commission that newcomers and refugees are often denied housing as a result of occupancy by-laws that are based on “Western” notions of family as including two parents and two children.

### ***Sexual orientation***

Prospective tenants may be asked invasive questions about the nature of their relationships or subjected to other inappropriate comments because of their sexual orientation. Consultees, such as the Housing Help Centre, emphasized that people who are lesbian, gay or bisexual may be refused housing because of homophobia. People should not have to hide their identities, relationships or sexual orientation just to be able to rent a unit. One consultee spoke about her experience of discrimination and homophobia when apartment hunting with her partner:

When together we are generally identifiable as a lesbian couple. As soon as we showed up, the landlord, who had been waiting on the sidewalk for us to arrive, didn't want to show the apartment to us. When I insisted on being shown the apartment, the landlord said we'd only want to stay there until we got married, anyway, and asked us if we had boyfriends. He went on to make a bunch of other negative comments about other issues, I think just to make us angry and leave. I was very upset and I wondered if this was why we hadn't heard back about other apartments we had applied for.

Submissions relating to sexual orientation and *Code* amendments are discussed in section 4.5. “Enforcing housing rights.”



### **Social assistance**

Many housing providers appear to be unaware that receipt of social assistance is a prohibited ground of discrimination under the *Code*. This may result in the overt denial of housing to people because they are in receipt of benefits. It was reported that housing workers have difficulties finding landlords willing to rent to people on social assistance. The Commission also heard that advertisements for “working people only” or “professionals” are not uncommon and that this shows the extent to which discrimination against low-income households is normalized in our society. KCLC noted that discrimination against people on social assistance is so common that many do not complain about it and instead only mention it when seeking advice on other matters.

In some cases, housing providers’ hesitance to rent to people on social assistance may be based on misunderstandings or misinformation. For example, the Housing Help Centre discovered that landlord organizations in Ottawa were under the erroneous impression that people receiving public assistance are not able to obtain a security deposit for the last month’s rent deposit. In other cases, the Commission heard that this reluctance may be linked to discriminatory stereotypes about people who receive social assistance such as that they are unreliable, untrustworthy or unable to pay.

Landlords often try to justify discrimination against social assistance recipients on the basis of supposed financial risk – arguing that these tenants are more likely to default on their rent than those who are employed. There is, of course, no empirical evidence to support these claims. The majority of rental arrears tend to be the result of an unforeseen drop in income – caused by a loss of employment and sudden disability or caregiving responsibilities – rather than because of being in receipt of social assistance at the time of application (CERA).

Even where a landlord has initially agreed to rent a unit to a person on social assistance, this does not guarantee equal treatment. One legal clinic described a situation in which a landlord tried to back out of a rental agreement on finding out that the tenant was in receipt of social assistance and refused to provide the keys. In this case, the tenant had a signed application and receipt for rent deposit to prove that she was entitled to access. In other cases, social assistance recipients may be required to have social services agencies pay the landlord directly, regardless of the tenant’s proven ability to pay rent on time.

The Commission also heard that recipients of social assistance experience discrimination in housing because the level of the shelter allowance is too low to allow them to secure or maintain housing. Human rights concerns also arise from co-operatives’ practices around subsidies for people on social assistance and calculation of rent based on a percentage of total income or equivalent to the shelter component of the member’s social assistance. This issue has come to the

attention of the Ontario Human Rights Commission through the *Iness* case<sup>46</sup> and other cases involving receipt of public assistance and accommodation. Submissions indicated that this is an area where greater clarification and guidance is necessary. See also section 5.3. “Poverty and inadequate income levels.”

According to the CMHA, Ontario, approximately one-third of clients on ODSP have a primary diagnosis of mental illness. These people are particularly vulnerable to negative stereotypes, such as being seen as “‘bums’ who chose to be idle at tax-payers’ expense” since their disability may not be evident (PACE).

People who are homeless and on social assistance face particular barriers in accessing housing. Consultees, including the Algoma Community Legal Clinic, indicated that when someone is staying in a shelter, landlords often do not call them back. If they do call back, when they find out the prospective tenant is staying at a shelter, they hang up. This phenomenon has been documented in relation to women staying in shelters for victims of violence.<sup>47</sup>

## 4.2. Tenant screening practices

When discussing tenant screening and legitimate reasons to restrict access to housing, it is important to keep in mind the context of housing as a fundamental human right in international covenants ratified by Canada.<sup>48</sup> Tenant selection practices must be consistent with this approach to housing and with an expansive and progressive interpretation of the protections in section 2 of the *Code*. This would include applying the duty to accommodate to the point of undue hardship when assessing and screening prospective tenants – see also section 4.3. “Housing and the duty to accommodate.” Where there are legitimate reasons for particular housing providers to deny housing to an individual, there still remains a societal and governmental obligation to make sure that this person is adequately housed.

Screening practices were a major concern for both tenants and landlords. Both tenants and housing providers noted that the *Code* does not clearly set out specific acceptable and unacceptable requirements and questions. Overall, there was no consensus between consultees about what were appropriate screening methods that would not infringe the *Code*. Tenants and their advocates were not in agreement as to what requirements were legitimate. Housing providers advocated for continuing current practices and guidance provided in section 21(3) and Regulation 290/98 as providing a suitable balance between human rights of tenants and the business needs of landlords.

Tenants and their advocates talked about difficulties posed by some of the most common practices used by landlords, housing providers and agencies hired to conduct such screening. The most common discriminatory barriers to access

identified by tenants were minimum income requirements and rent-to-income ratios, credit and reference requirements and co-signor and guarantor requirements. The Commission was told that most often a combination of these requirements apply making it even more difficult for tenants to qualify for housing and increasing their likelihood of being under-housed, housed in units of poor quality or homeless. Tenant advocates expressed concern that the use of discriminatory practices seems to be the norm and that this brings the administration of justice into disrepute.

The Commission recognizes that housing providers have a legitimate interest in being able to use non-discriminatory tenant screening techniques to select tenants. The Landlord's Self Help Centre noted that the process of screening prospective tenants is a fundamental business practice used to manage risks and stave off potential financial loss. A wide range of housing providers indicated that it was important for them to be able to assess whether tenants would be able to pay for rental units and keep them in good repair.

Some housing providers emphasized the importance of tenant screening based on non-discriminatory business practices since eviction proceedings for non-payment of rent take a number of months, during which time the landlord has to pay the mortgage, taxes, utilities and for repairs. Housing providers, including St. Joseph's Care Group, noted that the cost of bad tenancies, such as rent arrears, LTB costs and potential unit damage can be significant. Social housing providers noted that they were more at risk of incurring such costs than private sector providers as they have less capacity to absorb these additional costs and lack the tools to mitigate these risks.

On the other hand, tenant advocates argued that tenant screening plays a small role in the overall viability of rental housing businesses<sup>49</sup> and that restricting a landlord's ability to screen tenants would not impose undue hardship. It was also suggested that there may be a business argument for minimal screening as it would fill units more quickly and reduce vacancy rates.

Housing providers were also concerned that they could be viewed as having discriminated against someone because of a *Code* ground even if they have rejected the tenant because of legitimate reasons such as bad references or obviously inadequate income. Accordingly, there was an interest in having greater certainty about what is and is not allowed. As the CMHA, Ontario noted, the requirements must be flexible and balanced to protect the human rights of tenants while at the same time protecting landlords from potential hardships.

CERA/SRAC argued that there needs to be a shift in how housing providers screen prospective tenants – that in rental housing, landlords should not be able to deny a tenant an available unit unless they can show clear and compelling reason why the tenant should be disqualified instead of the tenant having to show that he/she qualifies. It was submitted that tenants should be accepted on a first

come, first served basis – that where there are no legitimate reasons for disqualification, the first person to apply should be offered the unit, similar to applying for an essential service like telephone or hydro.

Finally, a number of consultees pointed out that there are many reasons why tenants may be in arrears,<sup>50</sup> a number of which cannot be predicted by screening methods commonly used by landlords. For example, the Federation of Metro Tenants' Associations noted, "the reality is that no amount of credit checks, income verification or other business practices allowed by O. Reg 290/98 will prevent a tenant from losing their job, falling severely ill, or experiencing a family breakdown."

### **Section 21(3) of the Code and Regulation 290/98**

Under section 10 of the *RTA*, landlords are permitted to select prospective tenants based on the information prescribed in the regulations under the *Code*. Section 21(3) of the *Code* and Regulation 290/98 permit landlords to request income information from a prospective tenant only if the landlord also requests, and considers it with, credit references, rental history and credit checks.<sup>51</sup> "Income information" includes information about the amount, source and steadiness of a potential tenant's income. All of these assessment tools must be used in a *bona fide*, meaningful and non-discriminatory fashion.<sup>52</sup>

For the most part, landlords and housing providers viewed the regulation as providing sufficient guidance on how to use credit checks and reference checks in a non-discriminatory manner. However, most tenant advocates indicated that both section 21(3) and the regulation itself are unclear and that this may result in discrimination. There was wide consensus among tenant advocates that the requirement that the landlord use the financial information along with other information is not sufficient to protect tenants against discrimination. This is illustrated by the following example:

... if a landlord can use a combination of financial information to screen a prospective tenant they could use the information to discriminate. If a landlord does a credit check and finds out that the tenant is on ODSP and has an infraction on the credit rating (e.g. paid a bill late) they could use that credit infraction to deny the tenant the rental property when it's really because the landlord doesn't want to rent to someone on ODSP (Housing Help Centre).

Income information is used by a majority of landlords to confirm a tenant's identity and ability to pay rent. However, tenant advocates expressed concern that when information verifying income, such as a pay stub or social assistance stub, is requested, decisions may be made based on the source of the income rather than the amount of the income. For example, this information can be used discriminatorily to screen out people because they are on social assistance instead of working (Children's Aid Society of Toronto – CAST). As is noted in

section 5.3. “Poverty and inadequate income levels,” the shortfall between the shelter allowance on social assistance and the amount of money actually needed to pay for rent in Ontario may create a further incentive for housing providers to screen out tenants on social assistance based on income.

CERA/SRAC asserted that income information should not be used to disqualify prospective tenants, except in extreme circumstances such as where the information clearly indicates illegal activity or where the tenant states that he/she has no intention to pay. It was argued that where there is no history of rental default, it is reasonable to assume that an applicant will apply for an apartment at a rent he/she can pay. Finally, CERA/SRAC suggested that if the prospective tenant has no apparent income, landlords should be free to inquire as to where the tenant will be receiving funds to pay the rent, but an absence of income should not be used to deny a prospective tenant housing, except in extreme circumstances.

On the other hand, housing providers noted that it is very difficult for tenants to pay their rent if their other expenses are too high and they do not have adequate income. Some housing providers suggested that there must be a point at which a determination can legitimately be made that a unit is unaffordable for a particular applicant – for the benefit of both the tenant and the landlord.

How can a person pay a rent that is higher than their income? Accepting a tenant who is unable to pay the rent can lead to eviction, collection, bad credit rating and other consequences for the tenant far into the future (St. Joseph’s Care Group).

### ***Minimum income requirements and rent-to-income ratios***

Concerns have long existed about the use of minimum income requirements, such as that a tenant not pay more than 30% of his or her income on rent, and their discriminatory impact on people protected under the *Code*. The Commission’s position is that section 21(3) and Regulation 290/98 do not permit landlords to use minimum income requirements, income criteria or rent-to-income ratios.<sup>53</sup> Despite this, the Commission heard that these continue to be used by a range of landlord types. CERA/SRAC said that the use of minimum income criteria is more common among public, non-profit and co-operative housing providers because of an interest in having an “acceptable income mix.”

Key concerns about the use of minimum income criteria are that they have a systemic impact on *Code*-protected groups and do not accurately predict a tenant’s ability to pay the rent.<sup>54</sup> The Commission was told that many people from protected groups, including people with mental illnesses, will make the personal choice to pay 70 – 80% of their income on rent rather than the typical 20 – 30% rent-to-income ratio. In practical terms, the disparity between minimum wage or social assistance income and average rents across the province means that the

majority of renters spend much more than 30% of their income on rent each month.

CERA/SRAC provided the following examples of the pitfalls of using a 30% rent-to-income rule:

- a prospective tenant with a gross income of \$900 per month would be denied an apartment that costs more than \$300 per month
- a single parent with a child and salary of \$50,000 per year would be denied housing approximately 50% of the time as 30% of monthly income is around \$1,250 per month and average rent for a two-bedroom apartment in Toronto is over \$1,000 a month.

### ***Social Insurance Numbers***

Some housing providers require prospective tenants to give their Social Insurance Number (SIN) on applications usually for the stated purpose of conducting a credit check. While this may be convenient, credit checks can be conducted by a landlord based on other information. Consultees noted that a person's SIN is very private information, the disclosure of which makes tenants vulnerable to identity theft. Service Canada, a part of the federal government, specifically discourages private sector organizations, including landlords negotiating leases, from asking for a SIN.<sup>55</sup>

The CMHA, Ontario commented that people with mental illnesses often lose or have their SIN cards stolen during periods of homelessness, and that when a SIN is required, it puts them at risk of continued homelessness. CERA also noted that a SIN can identify that an applicant is a refugee, thereby increasing the likelihood of the household experiencing discrimination.

### ***Police or criminal background record checks***

Although record checks and background checks are not listed as permitted practices under section 21(3) of the *Code* and Regulation 290/98, the use of these screening tools was alleged to be fairly widespread, particularly among social housing providers.

In many cases, application forms and interviews include intrusive questions about a person's criminal history as well as details of the nature of their charges and/or convictions. Some specialized housing providers refuse to house individuals based on this history, or require them to be placed under greater supervision, disguised as "support" (John Howard Society of Toronto).

Housing providers suggested that such checks are a reasonable way of weighing the risks posed by prospective tenants. Other consultees stated that the right to housing is so fundamental that it should not be set aside based on the idea that, just because a person has offended in the past, they may commit an offense in the future. It was pointed out that there are mechanisms available to the landlord

to address actual illegal activity or the failure to pay rent, should either of these occur. Further, the argument was made that if landlords are legally permitted to inquire about the criminal history of prospective tenants, it would make it difficult to house people who have had any criminal involvement – a population that is already at heightened risk of homelessness. In many cases, the mere fact that a police record check is required discourages people with criminal records from applying for a unit and they will walk away instead of waiting to be turned down by the landlord.

Parkdale Community Legal Services raised the concern that police record checks adversely affect people with mental illnesses.<sup>56</sup> CERA/SRAC also noted that restricting access to housing based on a criminal record could result in a violation of the *Code* where the criminal activity was at least in part the result of a disability, such as an addiction, mental or cognitive disability. In these situations, the housing provider would be expected to accommodate the person unless it would amount to undue hardship. The Commission was pleased to hear that when housing providers have been advised of this, some have decided not to implement criminal record checks. See also “Criminal records and record of offences” in section 4.1 “Highlighting discrimination based on specific *Code* grounds.”

### ***Rent deposits***

The *RTA* allows housing providers to request a last month’s rent deposit.<sup>57</sup> FRPO indicated that this is the only type of security deposit a landlord is allowed to collect in Ontario and that is fair to tenants while serving as a legitimate business practice for housing providers. On the other hand, the Commission heard that this can result in the exclusion of low-income people, in particular people on social assistance, from housing. Algoma Community Legal Clinic said:

Individuals on OW/ODSP cannot get access to a community start-up and maintenance benefit (thereby a deposit) without a letter of intent from a landlord guaranteeing the apartment; however a landlord often will not guarantee the apartment without first getting a deposit. The end result is that OW/ODSP recipients are excluded from a vast number of available rental units.

In a meeting with newcomers receiving services from COSTI and throughout the consultation, the Commission heard about tenants being asked to pay exorbitant amounts of money as deposits to be able to rent units. In the most egregious cases, prospective tenants, many of whom are Aboriginal, new Canadians or permanent residents, were asked to pay up to 12 months rent in cash before occupancy.

Many clients are new to Canada and are not aware of their rights as a tenant. They feel obligated to comply and find it extremely tortuous to go through this pressure when they have to deal with difficulties in every

aspect of their life. Sometimes newcomers have to empty their bank account and borrow money from relatives to meet this condition. If they do not find employment soon, which is often the case, they are forced to go on social assistance, which could be prevented had they been able to keep the money in the bank (Flemingdon Neighbourhood Services).

### ***Co-signers, guarantors and requests for direct payments***

The Commission's position is that it is appropriate for a housing provider to ask for a co-signer or guarantor if there are legitimate reasons for the request, such as a history of default on rent.<sup>58</sup> FRPO submitted that requests for guarantors are justified when there are concerns that a prospective tenant may not be able to pay the rent, money to pay the rent is coming from another person, there is a lack of tenancy history or an insufficient credit record, among other reasons.

The Commission heard from tenant advocates that guarantors are most often requested only because of a prospective tenant's membership in a *Code*-protected group. The Commission heard that most commonly guarantors are required of lone mothers, newcomers and refugees, youth, people in receipt of public assistance, and persons who are more likely to have low incomes because of intersecting *Code* grounds, such as Aboriginal lone mothers. Child welfare may be asked to be a co-signer when youth leave care, even though the tenant has no prior rental history or evidence of arrears (CAST).

While some tenants may comply with such a requirement just to get housing, for others, this puts the rental unit out of reach. For example, many newcomers do not have any relatives or friends in Canada and are not able to provide a guarantor. The Commission heard that people with mental illnesses tend to have less contact with family and friends and are unable to find a guarantor or co-signer in the private market. Low-income applicants from equality seeking groups may not even know anyone with the minimum income required of a guarantor, such as when the landlord requires the guarantor to have an income of \$100,000 or above.

It was also reported that a growing number of housing providers require rent payments direct from social services or another source of income regardless of the tenant's proven ability to pay rent on time. This is often the case with social assistance recipients, especially newcomers (Hamilton Mountain Community Legal Clinic).

### ***Credit checks***

The Commission was told that while many landlords rely on credit checks, this information is a poor proxy for ability to pay the rent in the future. Many consultees emphasized that clients may have a poor credit rating because they have prioritized paying their rent over other bills. Jessie's Centre for Teenagers indicated that in some cases bad credit can itself be linked to *Code* grounds. Conversely, the Housing Help Centre noted that a tenant with a good credit rating



could easily have been evicted or moved without notice, since these matters rarely end up in the Credit Bureau.

While credit check information can be used fairly, the Commission heard that the inflexible use of it may be a barrier to access for equality seeking groups including newcomers and refugees, young first-time renters, and women entering the rental market after a relationship breakdown. Similar to the process used by other essential service providers such as telephone and hydro, CERA/SRAC proposed that only negative credit checks/references that relate to a history of non-payment of rent (rather than other bills) should be considered and that the duty to accommodate should also apply.

### ***Tenant insurance***

The Commission heard that some landlords require applicants to provide proof of annual apartment insurance, at an average cost of \$30/month, before they will rent them a unit. As CAST pointed out, this requirement has an adverse impact on lower-income people, households on social assistance, poor single parents, youth and newcomer families. It also poses a financial barrier for Aboriginal people and members of racialized communities (CERA/SRAC).

### ***Rental history and landlord references***

Housing providers have a legitimate interest in knowing if the applicant pays their rent on time and whether they have a good history of tenant behaviour. However, tenant advocates pointed out that newcomers, refugees, young first-time renters, women entering the rental market after relationship breakdown and homeless people may not have landlord references. Similarly, Aboriginal people moving from a reserve to an urban area may not be in a position to provide a reference from a private-sector landlord because of the ways that housing can be owned and allocated on a reserve. It was submitted that the absence of any rental history should not be treated as equivalent to a poor rental history.

In some cases, references are viewed as being unsuitable because of the nature of the housing previously occupied. When landlords refuse to accept tenants whose only references are from rooming houses, the Commission was told that this has a disproportionate impact on young people and people in receipt of public assistance.

In some cases, poor landlord references may be linked to *Code* grounds such as family status or disability and a failure to accommodate. For example, a previous landlord may provide a negative reference because of children's reasonable noise or behaviour linked to a mental disability. While some consultees suggested that asking questions about a person's history of evictions might be appropriate, others noted that people with mental illnesses are at a greater risk of being screened out of selection processes in which eviction history is one of the criteria used to assess suitability as a tenant. The Commission heard that people with mental illnesses are more likely to be evicted because of a lack of

accommodation by housing providers, and because of difficulties advocating for themselves in eviction proceedings.

Concerns were also expressed about requirements relating to length of residency as a systemic barrier to access. OFIFC said that many Aboriginal people are more transient than non-Aboriginal people, migrating between urban and reserve communities because of employment, family, access to health care and discrimination. For these reasons, refusal to rent based on having a short length of residency may act as a systemic barrier to access for Aboriginal people.

### ***Rent arrears***

The issue of rent arrears as a barrier to access was raised in relation to rent-gated-to-income (RGI) housing. One of the eligibility criteria for receipt of RGI is that the person not owe money to a social housing provider (MMAH). The Commission was told by tenant advocates that some social housing providers require a “clean” 12-month rental record and that others will not consider individuals for housing until all rent arrears or fees for damages to previous rental units have been paid. When local community organizations try to advocate for low-income prospective tenants and work out plans to pay off arrears, sometimes these efforts are not welcome as the housing provider would rather rent to someone else.

### ***Confirmation of employment***

The Commission heard that many housing providers in the private rental market prefer to hire “working people.” Some housing providers require tenants to have been employed full-time with one employer for a certain period of time.<sup>59</sup> Consultees indicated that requirements to provide employment references may be a tool used to screen out people who are viewed as undesirable because of poverty and/or *Code* grounds. The Commission was told that the following groups protected under the *Code* are negatively affected when they are asked to confirm employment:

- people with mental illnesses or other disabilities who cannot work
- people receiving social assistance benefits from ODSP or OW
- older people receiving benefits from the Canada Pension Plan
- Aboriginal people who are seasonally employed, work on contract or are hunters deriving or supplementing their sustenance in this way
- people who are unable to work due to caregiving responsibilities
- young people and students who are more likely to have short-term or part-time employment and shorter employment histories.

In practical terms, it was noted that while employment verification can provide information about a tenant’s current ability to pay rent, there is no guarantee that the applicant will not be laid off or unable to work in the future. In addition, employment income may not always keep pace with rent increases for long term tenants (Housing Help Centre).

### ***Assurances and contracts that are not required of other tenants***

The Commission was told that some housing providers may require that tenants with mental illnesses provide verbal or written assurances that they will take psychiatric medications or seek treatment as a condition of obtaining rental housing (PPAO). As well, tenants in receipt of subsidies may be asked to sign contracts requiring them to disclose to their neighbours what subsidies they are receiving so that overpayments can be reported. These kinds of requirements could infringe the dignity and rights of tenants protected under the *Code*.

### ***Occupancy rules***

In this consultation, and the Commission's earlier consultation on Family Status, the Commission heard about the discriminatory impact of arbitrary occupancy rules on families with children. For example, denying a three bedroom apartment to a single mother of three children because the "Canadian standard" was that such an apartment should be rented to a couple with two children was found to be discriminatory.<sup>60</sup> Such policies pose a particular barrier for "non-Western" or extended families. Occupancy rules about the sharing of bedrooms by children of opposite sexes also act as a discriminatory barrier to families in accessing appropriate rental housing.

As was noted in the Commission's *Policy and Guidelines on Family Status*, occupancy policies must be based on *bona fide* requirements.<sup>61</sup> However, the Commission was told that many occupancy policies appear to be based on housing providers' personal assumptions and preferences rather than municipal health and safety or over-crowding by-laws.

While most families would like to rent apartments that include bedrooms for each child, the reality across Ontario is that larger apartments are rare and expensive. Many families simply cannot find and/or afford these apartments. Arbitrary occupancy policies force families with children to rent marginal, substandard housing, stay in shelters or double-up with family or friends for extended periods of time. In the absence of legitimate health or safety concerns, it should be the responsibility of families – not landlords – to determine the size of apartment that is most appropriate for their needs (CERA/SRAC).

The Commission heard that occupancy policies used by social housing providers or co-operatives pose particular problems, because they are written down in policies and by-laws that are not easy to modify and are sometimes based on government guidelines. For example, Regulation 298/01 under the *SHRA* sets out the standard that there has to be one bedroom for every two members of the household.<sup>62</sup> The National Occupancy Standard (NOS) developed by the Canada Mortgage and Housing Corporation, suggests that parents should have a bedroom separate from their children and opposite sex children above age five should not share a bedroom.<sup>63</sup> It may be discriminatory for a housing provider in Ontario to apply and enforce such policies if they do not meet the tests for *bona*

*fide* requirements established by the Supreme Court of Canada in *Meiorin*.<sup>64</sup> For example, if social housing providers identify barriers that are imposed on them by government (or others) then they have an obligation to follow up with government to seek changes or the removal of those barriers.<sup>65</sup> The Commission is also of the view that government, in turn, has an obligation to work with the provider to remove those barriers.

The Commission was told that when these kinds of policies are applied inflexibly, low-income families may be denied access to subsidized housing altogether. For example, a lone mother with a young son may be disqualified from a one-bedroom apartment because of an occupancy policy, even though there is a very long wait list for a two-bedroom apartment.

### **4.3. Housing and the duty to accommodate**

The duty to accommodate to the point of undue hardship applies to housing providers and other responsible parties, such as governments or agencies that provide housing-related services. The obligation of government to meet its own duty to accommodate does not relieve housing providers and others from fulfilling their respective duties under the *Code*. Tenants bear the responsibility, where they are able, to make their needs known and to participate in the accommodation process. Accommodation must be provided in a manner that respects dignity, that is individualized and that provides for the integration and full participation of people protected under the *Code*. Where the most appropriate accommodation cannot be provided, other options in the continuum such as phased-in, interim or alternative accommodation must be implemented. The Commission's position has long been that only the three factors set out in subsection 17(2) of the *Code* may be considered in assessing undue hardship: cost, outside sources of funding, and health and safety.<sup>66</sup>

There was considerable consensus among housing providers, housing advocates, tenants and other consultees about the lack of awareness of the duty to accommodate and its application in the housing context. Many tenant advocates said that housing providers need more help to understand that accommodation is not just a good idea – it is a legal responsibility – and to learn how to fulfill this requirement. FRPO requested that the Commission develop policy and guidelines dealing with accommodation and assessing undue hardship in the housing context.

Accommodation needs may be related to a range of *Code* grounds including family status, creed (religion), sex, and race and race-related grounds. However, most of the discussion on accommodation focussed on disability, and in particular mental illness.

### ***Accommodation in tenant screening and during tenancy***

Both housing providers and tenant advocates described challenges arising from the expectation that tenants identify accommodation needs. Housing providers felt that in many cases, accommodation needs are not clearly stated until an eviction hearing has commenced, making it difficult for them to respond in a proactive manner. On the other hand, the Algoma Community Legal Clinic expressed frustration that landlords may require tenants to officially notify them of an illness to receive accommodation, even if the nature of the tenant's disability is obvious.

In terms of tenant screening, there are circumstances in which the duty to accommodate might require a housing provider to be flexible in considering credit history or a history of transient occupancy of rental housing, subject to the undue hardship standard. For example, CERA/SRAC proposed that it would be legitimate for a rental history of non-payment of rent to be considered but that before disqualifying a prospective tenant on this basis, the housing provider should have an obligation to ask the tenant about the circumstance surrounding the non-payment, ask whether the situation has changed and work with the tenant to reduce the risk of future default.

Consultees described common accommodations during tenancy, including ensuring wheelchair access into the building, installing alerting systems for persons with low hearing, or changing policies on behaviour expectations (ARCH). In co-operative housing, accommodation may include excusing a person with a disability from requirements to participate fully in the running of the co-op, such as shovelling snow, cutting grass or attending meetings.

The Canadian Hearing Society described problems in accommodation arising from a lack of respect for culturally deaf, oral deaf, deafened or hard of hearing tenants. Examples include housing providers or landlords who do not lift their heads or voices when speaking, and conversations between family and professionals that take place as if the deaf or hard of hearing person were not present.

The Commission heard that people with intellectual disabilities living in certain group homes<sup>67</sup> may be transferred without their consent, not allowed to make individual choices about what to wear or eat, and denied the right to leave the home, receive calls or attend events. The Advocacy Centre for the Elderly (ACE) told the Commission about the following practices in some retirement homes that appear to be inconsistent with the duty to accommodate older persons who rely on mobility aids:

- only residents who do not require mobility devices such as wheelchairs or scooters are welcome in the communal dining areas

- if residents cannot enter the dining area on their own (or with a walker), they must eat their meals in their room – and sometimes they must pay an extra fee for “tray service” for these meals to be delivered
- there are policies providing that no motorized vehicles are permitted in the common areas of a retirement home, which limits access to the elevators, the front door and the dining area
- these policies are applied even if the resident is able to demonstrate that he or she is able to safely operate the wheelchair.

A number of consultees described the need for modifications to units for older tenants with disabilities to allow them to continue to live in their units independently. When such accommodations are not provided, tenants are at risk of eviction due to perceived health and safety concerns. The Commission heard that the failure to accommodate, combined with the lack of accessible housing alternatives, may mean that these tenants cannot live independently and are forced to live with family or in nursing/care homes, in violation of the *Code* and of human dignity. Housing providers, particularly those providing specialized housing for older people, expressed significant concern about their ability to comply with *Code* requirements when many of their tenants simultaneously require significant modifications to their units to enable them to “age in place.”

### **Smoking**

The topic of smoking generated much discussion in the consultation. Since 2004, smoking has been prohibited in common areas of apartment buildings and other areas.<sup>68</sup> MMAH indicated that the *RTA* does not specifically address the issue of smoking in rental units, though there are options to deal with smoking when it interferes with other tenants’ reasonable enjoyment of the premises.

Exposure to second-hand smoke can have serious impacts on people’s health, particularly where they have medical conditions such as allergies, chemical sensitivities and other respiratory ailments. Where people live in close proximity to one another, travel of second-hand smoke can cause serious concern for people with certain disabilities and trigger a need for accommodation. For example, in a recent BC case, a woman who has hyper-reactive airway disease, caused and exacerbated by second-hand smoke, launched a human rights complaint against the Greater Vancouver Housing Corporation because of its alleged failure to provide her with smoke-free public housing.<sup>69</sup>

On the other hand, the Commission heard that low-income people may be adversely affected by no-smoking rules.<sup>70</sup> In addition, there appears to be a strong link between smoking and mental health issues. The PPAO estimates that 70 to 80% of psychiatric hospital patients smoke compared to 22% of the adult population in Canada. Medical research has shown that people with mental illness are about twice as likely to smoke as other persons.<sup>71</sup> Similarly, people with physical disabilities may smoke cigarettes or marijuana for symptom control.

The Commission's *Policy on Drug and Alcohol Testing* gives examples of when a substance dependency may be recognized as a disability. Generally, the substance abuse or addiction would have to be severe, leading to maladaptive patterns of behaviour or significant distress.<sup>72</sup> However, there are conflicting decisions as to whether or not smoking can be considered a disability and whether allowing people to smoke is an appropriate accommodation.<sup>73</sup>

The Commission received several submissions from landlords and housing providers that cited smoking as a major source of tension when balancing the rights of some of their tenants with the rights of others. If smoking is unilaterally prohibited in rental housing, landlords and housing providers risk inadvertently excluding people protected by the *Code* from accessing affordable housing, resulting in fewer housing options for individuals who are already marginalized. At the same time, allowing smoking may negatively affect the health of other tenants, including people with disabilities. An assessment of such health and safety risks would be an essential element of an undue hardship analysis.<sup>74</sup>

### ***Evictions and the duty to accommodate***

A major theme in the consultation was the link between evictions and disabilities, including mental illness. This risk of eviction is linked to section 64(1) of the *RTA*, which allows a landlord to give a notice of termination of tenancy if the conduct of a tenant, another occupant of the rental unit, or a person permitted in the residential complex by the tenant is such that it “substantially interferes” with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant. MMAH noted that the LTB must consider a tenant’s circumstance for eviction applications – for example if the tenant is in the hospital and cannot pay the rent. Consultees noted that when the tenant’s behaviour can be linked to *Code* grounds, a duty to accommodate may arise and no eviction order should be issued unless a finding of undue hardship under the *Code* is made.<sup>75</sup>

The Commission heard about many situations in which tenants were targeted for eviction, at least partly because of their disabilities. For example, in one case, a tenant using a walker who made a thumping noise when he walked was threatened with eviction even though the housing provider did not provide carpeting to minimize disturbance to the tenants below. The Commission also heard that landlords may use complaints about yelling, swearing and other sounds as an opportunity to get rid of a “difficult” tenant, even if the noises are a result of the tenant’s mental illness. In some cases, a landlord’s decision to start eviction proceedings may be based on or supported by the discriminatory views of other tenants. Threats of evictions and eviction proceedings can be very stressful for tenants, including people with mental illnesses.

One client’s disability was exacerbated by stress to such an extent that she was hospitalized for six weeks, and voluntarily moved from a rental unit she

had maintained for many years because she could not cope with the landlord's pending eviction proceeding (KCLC).

The Community Legal Clinic of York Region noted that much of the alleged "substantial interference" could be remedied (and eviction proceedings prevented) if landlords proactively explored options to accommodate the tenant's disabilities, such as more effective soundproofing of rental units. However, a range of organizations representing tenants noted that some landlords prefer to eliminate the "problem" by evicting the tenant rather than working with the tenant and community agencies to accommodate the person or improve any behavioural issues.

Landlords and housing providers said that they feel pressure to balance human rights issues with their ability to conduct business and other tenants' rights. Landlords described feeling that they had no choice but to pursue eviction procedures when one person infringes on another's rights to reasonable enjoyment of their premises without interference.

Ontario landlords are duty bound under the *Residential Tenancies Act* to take action to ensure all tenants have reasonable enjoyment of the rented premises. If unable to resolve issues, the landlord may have no choice other than seeking termination of the tenancy at the Landlord and Tenant Board, as the tenants who have been deprived from their reasonable use and enjoyment have a variety of options to enforce their rights (The Landlord Self-Help Centre).

Even where housing providers understand the duty to accommodate, they may be challenged in applying the *Code* because of other interests, such as the views of the other tenants, that may not amount to undue hardship. Unlike section 10 of the *RTA* which specifically refers to the *Code* requirements regarding selection practices, landlords may be unaware that the *Code* also applies to the assessment under section 64(1) of whether the behaviour of a mentally ill tenant or a family with multiple children is substantially interfering with the reasonable enjoyment of the residential complex.

From the social housing provider perspective, accommodating mental illness is a significant challenge, particularly where many of the tenants have mental illnesses and one tenant's behaviour infringes the rights of other *Code*-protected tenants. The Service Manager Housing Network (SMHN) indicated that there is pressure to sustain tenancies even if they cause significant disruption to the housing community. There was a strong perception among social housing providers that they are held to a higher standard in these kinds of circumstances because they may be viewed as "housing of last resort."

Recognizing that our tenants have fewer options, the Landlord and Tenant Board, for example, looks to social housing providers to go to greater



lengths to accommodate the needs of tenants. But in the absence of adequate resources, housing providers are rightfully concerned about their ability to meet the people's needs without compromising the needs of other households. Housing providers often find themselves forced to choose between the rights of individuals and the rights of the larger community. Ironically, the more legalized the issues become, the more difficult the management challenge is and the more resources are required to do a good job (OFCMHAP).

Tenant advocates raised concerns about accommodation and the criteria for eviction and eviction processes under the *RTA* for persons living in care homes.<sup>76</sup> Section 148(1) states that a landlord may apply to the LTB for an order transferring a tenant out of a care home and evicting the tenant if the tenant no longer requires the level of care provided by the landlord or the tenant requires a level of care that the landlord is not able to provide. An eviction order can only be made if appropriate alternate accommodation (housing) is available, and the level of care that the landlord is able to provide when combined with the community-based services provided to the tenant in the care home cannot meet the tenant's care needs (section 148(2)). ARCH Disability Law Centre (ARCH) pointed out that the "alternate accommodation" is most often a long-term care facility, a placement that does not promote inclusion and independence.

The Commission was told by consultees, including the Advocacy Centre for the Elderly, that section 148 of the *RTA* has a negative and disproportionate impact on persons with illnesses and disabilities in the following ways:

- the criteria for eviction treat tenants, who live in care homes because of age and/or disability, differently from other tenants
- a care home tenant's security of tenure is inappropriately made contingent on his or her state of health
- the process set out in the *RTA* for care home evictions provides less protections to vulnerable older people with disabilities living in care homes, when more protections are in fact warranted. For example:
  - the only recourse through which a care home tenant can dispute the eviction is mandatory mediation, which can lead to poor outcomes for tenants when adequate steps are not taken to address power imbalances
  - many care home tenants have mobility problems, cognitive difficulties and other impairments, yet they have less time than other tenants to seek advice and to obtain legal assistance
- there are other means of addressing situations in which a care home tenant becomes disruptive or cognitively impaired with the consequence that he or she is a threat to the safety of others in the building. For example, other provisions of the *RTA* can be used to evict the tenant and the *Mental Health Act* may be used in extreme situations if a tenant develops a mental health problem and is a serious danger to him/herself or others as a consequence

- threats of eviction under this section could be used by housing providers to make care home tenants more compliant and prevent them from raising legitimate complaints.

Section 83 of the *RTA* provides discretionary powers to the Landlord and Tenant Board (LTB) when dealing with an application for eviction. While it has the power, under subsection 83(1)(a), to refuse to grant such an application, the mechanisms by which such discretion is exercised may not be clear. For example, the Commission heard that in some cases, when tenants fail to appear for a hearing, the LTB asks the landlord if there are circumstances affecting the tenant that indicate that tenancy should not be terminated, even though it is the landlord who is seeking eviction. The Commission was also told that the LTB may not always apply the *Code* principles of the duty to accommodate to the point of undue hardship when considering a landlord's application to evict a tenant for reasons relating to a *Code* ground.

Tenants with mental illnesses are vulnerable to eviction and homelessness when they are unable to effectively assert their rights under the *RTA* before the LTB. Consultees described the following challenges faced by tenants with mental illnesses before the LTB that can result in adverse outcomes for them:

- they may not understand the legal issues at stake in a hearing at the LTB
- there is no provision to appoint a litigation guardian or legal case worker to act on the behalf of a tenant who is mentally incapable of filing an application and pursuing a remedy at the Board. This interferes with the ability of tenants with mental illnesses to enforce their rights, including defending themselves against eviction
- tenants may not properly recollect events, understand the legal process, remember to attend at hearings or retain legal representation until after an eviction order has been enforced.

Consultees pointed out that the LTB has information sheets on the *RTA* in many languages posted on its website, but has a policy of not providing language interpretation for litigants who speak neither French nor English. While it allows litigants to bring their own interpreters, the LTB does not pay interpretation costs. The Commission heard that this poses a barrier to access and justice for low-income tenants, such as newcomers, who need assistance in languages other than English and French. Although not raised in the consultation, similar concerns about accessibility could arise in the context of any adjudicative body's policies and procedures. The Commission was told that the language barrier at the LTB, combined with a bias in favour of the landlord, can result in unfair treatment of some tenants and other serious consequences. As one legal clinic noted:

It is far less likely that such a tenant, without representation and an interpreter, will be able to adequately present his/her case. The consequences can be serious: the loss of a home. Yet the Board is

committed to hearing cases as expeditiously as possible. This means that the Member may well proceed with a case if the tenant speaks a little English/French even though the tenant cannot fully understand and participate meaningfully in the hearing.

Organizations such as the CHS and ARCH provided the following examples of problems with accommodating people with disabilities at the LTB:

- denying the request of a person with a visual disability for documents in an alternate format
- denying an adjournment based on an individual's disability
- denying a request for a hearing by videoconference or telephone when a person could not get to a hearing because of his or her disability
- failing to ensure that a tenant's accommodation needs during the hearing process are met
- lack of access to sign language and other services such as real-time captioners, computerized notetakers and assistive listening devices, for people with hearing impairments.

Application fees for tenants to get their matters before the LTB were also raised as a barrier to access for low-income tenants, especially people on social assistance. For example, tenants who have been overcharged or want to get a reduction in rent because of disrepair must pay \$45. Parkdale Community Legal Services noted that this fee discourages tenants from making applications. This results in them being effectively denied the remedies they are entitled to and the landlord's behaviour remaining unchallenged.

### ***Accommodation and the Social Housing Reform Act***

The *Social Housing Reform Act* ("SHRA") was amended in July 2007. The Ministry of Municipal Affairs and Housing (MMAH) indicated that the objectives of the amendments were to facilitate more equitable and transparent treatment of tenants. These amendments included:

- exempting, when considering financial eligibility, certain assets held in trust for a member of a household with a disability
- creating more consistency in the treatment of income for the purposes of calculating RGI subsidies
- amending eligibility rules so that households that have made reasonable efforts to obtain repayment agreements for rents owed in prior social housing tenancies are eligible for assistance
- changing internal review process to require disclosure to the household of information that led to the decision being reviewed
- strengthening the Special Priority Policy (SPP), which provides priority access to social housing for victims of abuse.

Concerns were raised about the lack of individualized accommodation in, and the resulting adverse impact of, the application process for supportive housing on people with disabilities who have difficulties attending appointments, completing

paper work and attending interviews (ARCH). The Commission also heard concerns about social housing providers giving prospective tenants applications that were not in their first language, or in the case of people with disabilities, in formats that were inaccessible. Further concerns were raised that extended family and kinship networks may not be taken into account when determining eligibility for housing of Aboriginal people.

Social housing providers noted that they are subject to funding provisions, legislation and administrative requirements established by federal, provincial and municipal governments that may constrain their ability to meet their legal obligation to accommodate. For example, some indicated that the *SHRA* is too prescriptive in that it contains many rules regarding funding, managing the waiting list and access to housing, including the selection of households, special priority programs, occupancy standards, and household income limits. SMHN noted that the *SHRA* does not allow social housing providers the flexibility to modify their procedures or raise the revenues needed to address tenants' needs.

In this context, the Commission was told by tenant advocates that the lives of tenants are frequently scrutinized to determine compliance with administrative policies, such as those relating to overnight guests or reporting of income, with the distinct possibility that they could lose their homes over fairly minor infractions of the rules. Underlying this was said to be a "culture of contempt" in which tenants of subsidized housing are being treated as "less worthy, less important, less responsible and less honest than others in society, simply because they are poor and in need of a housing subsidy" (ACTO).

The ability to live independently with or without supports is an eligibility requirement for RGI assistance under the *SHRA* (MMAH). A person is considered to be able to live independently if he or she is able to perform the normal essential duties of day-to-day living or can do so with the aid of support services. However, numerous submissions pointed out that the *SHRA* does not direct how this is to be determined or what factors are to be taken into account. The individual must demonstrate that these support services will be provided to him or her when they are required.<sup>77</sup> A range of consultees, including the SMHN indicated that adequate funding for such services must be provided, when required, for social housing to be a viable option for people who require support to enter into and maintain tenancies. A number of submissions indicated that this requirement combined with the loss of homecare can result in the loss of housing or ineligibility for housing under the *SHRA*. These concerns also apply to co-operatives regulated under the *SHRA*.<sup>78</sup>

Prior to its reform, the *SHRA* stated that tenants in social housing were required to report any changes in income within 10 days. The SMHN noted that, following amendments to the *SHRA* in 2007, households are now required to report a change in income or household size if the change would result in an increase in the RGI rent payable by it, or would make the household no longer eligible for the

unit if occupied. The amendments allow service managers, who make decisions on a household's eligibility for a unit, to use their discretion to extend the 10-day timeline. They also have discretion to not make a person ineligible, if they fail to report certain changes (MMAH). However, consultees raised concerns about the lack of guidance for service managers on how and when the discretion is to be exercised. The Commission received many submissions detailing how the 10-day reporting deadline can be extremely problematic for people from marginalized groups, and how strict adherence to these guidelines and a failure to accommodate *Code* needs can result in tenants losing their subsidy.

The Commission heard that people with disabilities, lone-support parents, and persons with English as their second language face barriers in meeting these reporting deadlines, and yet this may not be considered by housing providers (Community Legal Clinic of York Region). A failure to exercise discretion means that all of these groups are less likely to have equal access (Housing Help Centre). Despite this, there is a shortage of services to assist tenants in understanding and responding to requests for documentation within the timelines (North Peel & Dufferin Community Legal Services).

The Commission heard that housing providers may not apply the duty to accommodate to reporting requirements and the exercise of the discretion. For example, a tenant with a mental disability might be given a one-time extension to the deadline but strictly warned that they must meet the deadline the next time. In other cases, the Commission heard that tenants may be penalized for seeking accommodation relating to reporting deadlines. For example, by requesting this form of accommodation, a person may be viewed by a housing provider as being incapable of living independently as is required under the *SHRA* (North Peel & Dufferin Community Legal Services).

The Commission heard that the consequences of not meeting the reporting deadlines, even when linked to a *Code*-need for accommodation, can be disastrous for the tenant. Rather than agreeing to exercise discretion and extend the timelines for reporting, a housing provider may proceed to give notice of cancellation of subsidy, which requires the tenant to start an appeal to the service manager. A wide range of tenant advocates told the Commission that the service manager appeal is a cursory review of the paper record, including written submissions. The process of requiring written submissions disadvantages tenants for whom English is not a first language and tenants with disabilities, especially since findings of credibility may be made based on these submissions alone (North Peel & Dufferin Community Legal Services).

SMHN noted that there are variations in processes for internal review but that, in accordance with the *SHRA*, no person who participated in making the original decision is involved in the internal review of that decision. Tenant advocates said that the internal review is not an independent review of whether the decision to

cancel the subsidy was correct, and that in many cases, the original decision is upheld. A legal clinic provided this example:

My clients were both developmentally delayed, married and have two children. They both had part-time jobs in addition to receiving Ontario Works benefits. They have a Child & Family Services Worker who assists them with correspondence and other paperwork. She advised them to report their income to Ontario Works and assumed this information would be shared with the municipal housing provider, because they are in the same offices. The information was indeed shared, however the tenant's subsidy was removed because the information was not given directly to the housing provider. When this was explained by the worker at the "internal review" stage, the decision was not changed and the subsidy was lost.

As the Commission heard from so many, including the Community Legal Clinic of York Region, a tenant's loss of subsidy usually leads to eviction for non-payment of rent because they cannot afford to pay the market rent. Consultees explained that under the *RTA*, applications relating to rent arrears must be decided by the LTB before an eviction order may be made (section 74(3)(a)). However, the *RTA* prevents the LTB from making or reviewing decisions concerning determinations of eligibility for subsidy or other prescribed assistance (section 203). Despite the serious consequences of the loss of subsidy and the connection to eviction proceedings before the LTB, the only way to get an independent review of the subsidy decision is for the tenant to file an application for judicial review in the courts – an option that may not be feasible for most low-income tenants (Hamilton Mountain Community and Legal Services).

Once evicted, tenants often stay at homeless shelters while looking for new housing. For vulnerable tenants with disabilities and/or language barriers, or seniors or sole-support parents, the loss of affordable housing is disastrous as these people already face significant barriers to finding housing in the private market and the wait time for subsidized housing is very lengthy (North Peel & Dufferin Community Legal Services).

MMAH noted that recent amendments have enhanced the internal review provisions by requiring disclosure to the household of information that led to the decision being reviewed, but noted that this has been a major concern for tenant advocates and that it is continuing to work with partners and stakeholders on this issue.

### ***Submissions relating to the undue hardship standard***

Tenant advocates expressed the view that the balance struck in the *Code* itself is reasonable in addressing the needs of the landlord and the tenant in situations where accommodation is required. For example, *Code*-protected tenants may still face eviction if the landlord can prove undue hardship based on costs or the

health and safety risks to either the landlord or the other tenants in the complex where the tenant is housed.

Many landlords and service providers said that the standard of undue hardship is too high and too onerous, especially where buildings must be modified to appropriately accommodate people's needs. Housing providers, including the Toronto Community Housing Corporation (TCHC), drew the Commission's attention to situations in which the impact of combined requests for accommodation from multiple tenants might amount to undue hardship. An example is where a large proportion of tenants simultaneously require modifications to allow them to remain in their social housing units. For the most part, housing provider submissions and discussions at the roundtables focussed on cost and funding. Social housing providers stated that accommodation requirements cannot be implemented without straining resources for other needs, such as building repair and maintenance (SMHN), and that generally, housing providers are not given the resources by the government to meet extensive needs for accommodation (ONPHA). A wide range of consultees expressed the view that governments and funders also have roles to play in meeting the duty to accommodate.

The legislation and program rules governing social housing limit the funding available to housing providers to meet extraordinary costs. The duty to accommodate needs to include those who draft policy and procedures. Funders should, and regularly do, provide additional funding to meet the costs of accommodating the special needs of those with addiction and mental health issues (OFCMAP).

More generally, private housing providers argued that accommodation is a societal responsibility and that the costs should not be borne by either landlords or tenants, instead government should defray the costs. Without this, the high costs of accommodation could translate into higher rents for all other tenants, with the burden being placed on low-income people (Eastern Ontario Landlord Organization – EOLO). The Landlord's Self Help Centre indicated that for its clientele, small scale landlords in the secondary rental market,<sup>79</sup> the costs of renovation, legal fees and loss of rent on top of an already unstable housing stock could make the residential rental business a less attractive option.

Even tenant advocates were pragmatic about the difficulties that accommodation requirements pose for housing providers, and supported housing providers' calls for government assistance in meeting their respective duties to accommodate:

Housing providers face financial difficulties when having to purchase devices, or conduct renovations to include our target group (i.e. persons with disabilities, including deaf people and individuals with hearing loss). The government needs to acknowledge these sometimes extensive costs

and endeavours and create a funding body to apply to for assistance with these costs (CHS).

## 4.4. Raising awareness

### ***Confusion about the Code and requirements under the RTA***

The Commission heard that while some provisions of the *Residential Tenancies Act (RTA)* overlap with those in the *Code*, there are many areas in which the *RTA* may be interpreted as allowing something that is contrary to the *Code*. For example, consultees noted that housing providers may interpret the *RTA* as permitting them to advertise “no pets” or offer “adult only” buildings while restrictions of this nature would be impermissible under the *Code*.

It is clear that landlords and housing providers may be unaware that the *Code* has primacy over the *RTA* and that it is not enough for them to meet only the requirements in the *RTA*. This is even though the *RTA* itself reflects the primacy of the *Code* in section 3(4): “If a provision of this Act conflicts with a provision of another Act, other than the *Human Rights Code*, the provision of this Act applies. 2006, c. 17, s. 3 (4).”

### ***Education and public awareness***

A major theme throughout the consultation was the need for further education across the province on human rights in rental housing and the corresponding obligations. It is clear that there is a broad need for human rights education – there is much work to be done across the province to create a culture of human rights and bring home a practical understanding of human rights.

Given the low proportion of human rights claims in housing, tenant advocates argued for measures by the Commission to increase tenants’ awareness of their rights and enforcement mechanisms. Many submissions also dealt with the need for training for adjudicators, decision-makers and government bodies on international obligations and the potential application of the *Code* to decisions made under other statutes and policies, practices or statutes that may be developed. Other submissions noted the need to bring an awareness of the *Code* and discriminatory impacts of NIMBYism to municipal decision-makers, local homeowner and business associations and individuals in communities.

Consultees recognized that public education of this magnitude and scope is not a task that can be conducted by the Commission alone. Most consultees saw partnership opportunities between the Commission and local community organizations, including housing provider associations, tenant organizations and government ministries. Consultees also suggested that the Commission provide



additional resources, such as training materials or resource guides, to support community organizations in their public education work.

A number of consultees spoke about the need for the Commission to take on an expanded role in the community. Suggestions included more proactive enforcement, public education, problem solving and dispute resolution, working collaboratively with community organizations including specialty legal clinics, mental health courts and Local Health Integration Networks, and establishing a local presence and effective dialogue with communities across Ontario.

The need for clear communication with housing providers to help them proactively comply with the *Code* was raised repeatedly by both tenant advocates and the housing providers themselves. The Landlord's Self Help Centre indicated that many of its clients do not necessarily have a clear understanding of the legal obligations they have assumed and the applicable regulatory framework, of which the *Code* is only one part. FRPO noted that ideally, education efforts will be focused on providing up-to-date information to landlords and managers to help prevent violations. Kensington-Bellwoods Community Legal Services advocated for measures that would tell landlords and property managers that human rights in housing will be vigorously enforced, including such steps as issuing media releases about Tribunal decisions.

In general, the following substantive topics for further housing provider education were identified in the consultation:

- the primacy of the *Code* over the *RTA*
- advertisements that may be viewed as discriminatory
- limitations on housing providers' ability to screen out "undesirable" tenants
- the duty to accommodate and the undue hardship standard
- policies and procedures to deal with human rights concerns, including relating to harassment between tenants.

While some suggested that these forms of education are most needed by smaller landlords who are not part of any housing provider association, the consultation revealed that there is a more widespread need. For example, it appears that large percentage of housing providers view the rights of landlords and other tenants as being equivalent to those of *Code*-protected tenants regardless of the primacy of the *Code*.

Overall, landlords indicated that they welcome information about human rights as a tool in helping them comply with the applicable laws. The Commission heard that housing providers may have difficulty implementing human rights policies because they don't understand them and feel that they don't work for them – this leads to resentment and an inclination to ignore the policies rather than try to comply with them. One consultee noted that the challenge is to help landlords understand why the *Code* is important to enforce when it may be viewed as having "practical ramifications that are financially devastating to them."

Some consultees suggested licensing as a method of ensuring that landlords receive awareness training on the basic laws around housing, as well as human rights laws. This was an issue of much debate among housing providers and tenant advocates. Opponents of licensing indicated that it would discourage people from becoming landlords and reduce opportunities for creating more affordable housing. Some housing provider organizations indicated that similar objectives could be met through other means – for example by providing human rights training to members as a condition of registration through voluntary certification programs.

Many consultees spoke about democratic decision-making and the lack of awareness of the *Code* in co-operatives as factors leading to *Code* violations and difficulties resolving human rights issues. For example, the Commission heard that member-approved by-laws, including those relating to eviction, may be applied even though they conflict with a need for accommodation under the *Code*. In other cases, the Commission was told that boards of individual co-ops believe that they can make up their own rules without taking the *Code* into account, or that existing rules cannot be modified to address human rights issues without approval from a majority of the membership. These types of issues indicate a need for further measures to raise human rights awareness within this sector.

## **4.5. Enforcing housing rights**

Consultees described concerns about applying human rights principles in the context of decisions made under the *RTA* or the *SHRA*. Courts and tribunals must interpret and apply domestic law in a manner consistent with the state's international human rights obligations.<sup>80</sup> The Supreme Court of Canada's recent decision in *Tranchemontagne*<sup>81</sup> makes it clear that administrative decision-makers, such as the LTB or service managers under the *SHRA*, are required to consider and apply the *Code*. However, concerns were raised that the *Code* and international covenants are not appropriately being given effect by decision-makers applying the *SHRA* and the *RTA* in Ontario.

### ***Proactively dealing with human rights issues***

Housing providers, tenants and society-at-large benefit when housing providers create and maintain environments that are inclusive, diverse and free of discrimination. Yet, the Commission heard that housing providers may not have a sufficient understanding of what kinds of policies and procedures are necessary to prevent and address situations of discrimination. Many landlords indicated that they feel they do not have the tools to appropriately deal with human rights issues such as accommodation requests or allegations of harassment, to prevent these issues from turning into human rights claims. For example, in the

roundtables and throughout the consultation, housing providers expressed concern about not knowing what to do when tenants harass each other.

In some cases, landlords themselves may feel disempowered when exposed to racism, harassment or other forms of discrimination because of their own membership in a *Code*-protected group. Such disempowerment, along with a lack of knowledge about ways to prevent and address discrimination, can hamper a housing provider's effective response to situations of discrimination.

In this consultation, the Commission also heard that many tenants are unaware of their rights, and are fearful that they may jeopardize their housing if they raise human rights concerns while still living in the rental unit. For example, co-op members told the Commission that it can be difficult for them to raise human rights issues because of the emphasis on democratic decision-making.

A recently released Commission policy, *Guidelines on Developing Human Rights Policies and Procedures*, provides guidance on how organizations, including housing providers, can prevent and address human rights issues. It states that a complete human rights strategy with these goals should include a barrier prevention, review and removal plan, anti-harassment and anti-discrimination policies, an internal complaints procedure, an accommodation policy and procedure and an education and training program.<sup>82</sup>

### ***Human rights claims under the Code***

The Commission's caseload is not a true reflection of the prevalence of discrimination in housing since only 4% of all complaints relate to discrimination in housing.<sup>83</sup> According to CERA, although employment complaints are 20 times more common than housing complaints, discrimination in housing affects the most disadvantaged groups at least as much as discrimination in employment. For example, refugee claimants, people on social assistance and people with disabilities who are unable to work are more likely to experience discrimination in housing than in employment. In addition, as almost one-third of low-income tenants move each year, there is great potential for exposure to discriminatory selection practices.<sup>84</sup>

Tenant advocates said that the low proportion of housing complaints, along with the scarcity of adjudicated human rights claims and nominal remedies, brings into question the effectiveness of the enforcement of equality rights in Ontario. As the Housing Help Centre pointed out, the low number of complaints leads to a misperception that housing discrimination is not a prevalent issue. Other tenant advocates noted that because housing discrimination cases and remedies for *Code* violations are so rare, housing providers may be less motivated to comply with the *Code*.

Consultees suggested a number of reasons for the low number of human rights claims in housing including:

- lack of awareness of *Code* protections, difficulty recognizing violations when they occur and fear of reprisals for asserting housing rights
- the characteristics and circumstances of people experiencing housing-based discrimination. For example, people with mental illnesses or first languages other than English or French may not be sufficiently empowered to deal with the complexities of the system. Others may not have a permanent mailing address or telephone number
- barriers to accessibility in human rights processes including reliance on centralized offices, 1-800 numbers and Internet access rather than regional service provision, insufficient funding for tenant advocacy services and complex bureaucratic processes.

OFIFC recommended efforts to promote better access to resolution of human rights issues in housing for Aboriginal people through significant outreach, culturally-relevant materials, direct involvement of Aboriginal communities and organizations, and measures to simplify and make the complaints process more accessible. It said that such measures are warranted because of the unique history of colonization and ongoing experiences of systemic discrimination and historical disadvantage experienced by the Aboriginal people in Canada.<sup>85</sup>

Housing providers expressed considerable frustration about formal human rights claims made under the *Code*. For example, the CHFC noted that human rights complaints are perceived as an avenue for appeal beyond the co-op's internal processes to resolve concerns or the processes prescribed under provincial legislation. Many landlords felt that they were viewed as being "guilty until proven innocent." One private landlord expressed the fear that defending against false accusations would cost "bundles."

A number of submissions discussed the Commission's role in ensuring effective enforcement of human rights protections in the province. CERA/SRAC urged the Commission to respond promptly to identified violations of the right to adequate housing affecting *Code*-protected groups, and do everything in its power to pursue effective remedies to these violations. It also noted the Commission's role, as a human rights institution, in promoting and ensuring the harmonization of national laws and practices with international human rights instruments and their effective implementation.<sup>86</sup> Finally, the Commission was asked to support important substantive equality claims before the Human Rights Tribunal of Ontario, addressing the issues of the most disadvantaged groups in housing in the new direct access system.

### ***Enhancing Code protections through further amendments***

Many consultees called for *Code* amendments to include social condition as a listed ground of discrimination. This is in accordance with the recommendations of the CESCR that "federal, provincial and territorial legislation be brought in line with the State party's obligations under the Covenant, and that such legislation

should protect poor people in all jurisdictions from discrimination because of social or economic status.”<sup>87</sup>

As HomeComing Community Coalition noted, “[s]ome affordable housing residents are protected by the *Code* on other grounds, such as disability or receipt of social assistance, but others are not. The recognition of ‘social condition’ as a prohibited ground for discrimination would be a welcome protection for homeless or low-income people now waiting for an affordable home.” While supporting the call for amendments to include social condition as a prohibited ground of discrimination, other consultees submitted that this is not a precondition for effective enforcement of rights to housing under the *Code*. Even if the *Code* is not amended to include social condition, some submissions emphasized that policies or practices that discriminate against or deny access to housing to poor people may be viewed as violations of the *Code* because of the close connection between poverty and membership in *Code*-protected groups.<sup>88</sup>

FRPO indicated that adding the ground of social condition would make it more difficult, if not impossible, for housing providers to address discrimination. FRPO also raised practical concerns about the scope of this ground and how it would be applied, noting that claims based on it would be more ambiguous than those under existing grounds.

The Commission’s attention was drawn to the exclusion of “record of offences” as a prohibited ground of discrimination under section 2 of the *Code*, and to the narrow definition of “record of offences” in the *Code*. Under section 10(1), “record of offences” means a conviction for, (a) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or (b) an offence in respect of any provincial enactment.

As the John Howard Society of Toronto pointed out, although many people with criminal records are eligible for pardons, the process to obtain a pardon is very onerous, time-consuming and costly.<sup>89</sup> It was therefore argued that the *Code* should be amended to protect people who may have a conviction but have not been pardoned, as well as people who may have federal, and not just provincial, charges on their criminal record.

A number of consultees pointed out that “sexual orientation” is not listed as a ground for which harassment is prohibited under section 2(2) of the *Code*, and that the *Code* should be amended to include it. In the meantime, the Commission’s position is that harassment is also a form of discrimination and prohibited under section 2(1) of the *Code*.<sup>90</sup>

Submissions were also made that “gender identity” is not listed as a ground of prohibited discrimination in section 2(1), nor is it listed in section 2(2) as a prohibited ground of harassment. A few submissions asked for amendments to explicitly protect against discrimination and harassment because of gender

identity. While the Commission supports making this change, until the *Code* is amended, the Commission's position is that gender identity is protected under the ground of sex.

Subsection 21(1) of the *Code* provides an exemption from the application of the *Code* where a landlord or family member shares a bathroom or kitchen facility. Tenants and tenant advocates, including the Federation of Metro Tenants' Associations, were very concerned about this exemption's impact on vulnerable tenants such as newcomers. For example, one survey respondent noted that she felt terrible when her gender identity complaint against a landlord could not proceed because of this exemption.

## **5. SYSTEMIC AND SOCIETAL HUMAN RIGHTS ISSUES IN HOUSING**

### **5.1. Inclusive design in the housing sector**

People protected under all grounds in the *Code* should be able to access housing and face the same duties and requirements as everyone else with dignity and without impediment. Housing providers, and other responsible parties including government, are required to make sure that the housing they supply and programs they administer are designed inclusively. They are also required to remove existing barriers to housing, subject to the standard of undue hardship. In this consultation, the Commission heard about problems associated with the lack of inclusive design in both physical features and in applicable policies and programs.

#### ***Built design and physical features***

As was noted in the background paper, principles of universal design must be incorporated into the development and construction of housing, and new barriers should never be created when building or renovating facilities.<sup>91</sup> Inclusive design elements relating to physical features of buildings may benefit people protected under a few different *Code* grounds, along with other tenants. For example, a fully sound-proofed apartment would meet the needs of a tenant who uses a walker or a tenant with multiple children while also yielding benefits for the neighbouring units.

While the principles of inclusive design apply to all *Code* grounds, most consultees told the Commission about situations in which the principles of inclusive design relating to disability are not being met. For example, the CMHA, Ontario commented that inclusive design to meet the needs of people with mental illnesses (who often prefer to live alone rather than with a roommate) would require the creation of more affordable bachelor and one-bedroom

apartments. The Canadian Hearing Society noted that most rental housing units do not supply fire safety equipment to ensure that all tenants, including people with hearing impairments, are alerted in a timely way in the event of a fire. Hamilton Mountain Legal and Community Services noted that they receive many calls from tenants regarding buildings without entrance ramps or the existence of other barriers to mobility. Concerns about the lack of visual alerting systems and buzzer systems to allow tenants with disabilities to identify visitors and open the doors for them were commonly raised. The Commission was also told that people with chemical sensitivities face a lack of rental housing that meets their needs because of features like carpeting.

Housing providers raised concerns about being required to redesign and retrofit older buildings to meet accommodation requirements. FRPO suggested that accommodation and inclusive design requirements should only be applied to new buildings. The Commission agrees that an emphasis on inclusive design in all new buildings would benefit housing providers, tenants and society at large. However, housing providers would still be obligated to remove existing barriers, subject to the undue hardship standard.

Concerns were raised about the failure of the existing *Building Code* to set standards for inclusive design. MMAH submitted that several accessibility requirements are included in the “Barrier-Free Design” section of the *Building Code* and that the *Building Code* was most recently amended in 2006. However, many of the Commission’s concerns, noted in its 2002 submission on the *Building Code*, have not yet been addressed.<sup>92</sup> Tenant advocates noted that the *Building Code* still does not ensure access for many people with disabilities, including people with large mobility devices and persons with environmental sensitivities (Hamilton Mountain Community and Legal Services). Reliance on relevant building codes has been clearly rejected as a defence to a claim of discrimination under the *Code*.<sup>93</sup>

Similarly, consultees including ARCH raised concerns about flaws in the *Accessibility for Ontarians with Disabilities Act, 2005 (AODA)* standards that have been developed to date.<sup>94</sup> They also expressed concern that future standards, such as such as the Accessible Built Environment Standard may also fall short. MMAH indicated that it is the lead Ministry for the Committee developing this standard. The Ministry of Community and Social Services (MCSS) is responsible for administering the *AODA*.<sup>95</sup>

### ***Programs, policies and practices***

The principles of inclusive design are not just applicable to buildings, physical structures or other elements of built design. They are equally applicable to programs, policies and practices that could pose barriers to access for people protected under the *Code*.<sup>96</sup> The Special Rapporteur on adequate housing has said that the design of policies and programs “should be based on a human rights framework and should fully recognize the right to adequate housing.”<sup>97</sup>

The Commission heard that there is a need for Ontario's housing programs to be designed to include *Code*-protected groups with specific needs. For example, ACE stated that there is a need for increased access to sufficient, adequate and affordable housing options for older people with mental illnesses who have ongoing complex physical or chronic health care needs. The OFIFC said that although Aboriginal youth are overrepresented in the child welfare and youth justice systems and are at risk of homelessness upon discharge, there are no specific affordable housing programs for urban Aboriginal youth.

The OASW said that the housing system is not "tenure neutral." Rather, higher-income people who are best able to help themselves in the market system and buy a house are disproportionately assisted by government programs and subsidies. It further indicated that lower-income people, whose housing rights have not been achieved, receive very little assistance, if any, and are forced to live in some of the worst quality housing.

Consultees including CERA/SRAC provided examples of government programs, policies and practices that may infringe the requirement to design inclusively:

- chronological based allocation of social housing (affecting youth, newcomers and people in immediate need)
- the failure to provide shelter allowances or emergency assistance to people at high risk of homelessness
- the failure to provide shelter allowances or emergency assistance or alternative accommodation to people at risk of eviction because of unforeseen circumstances
- lack of clear policies regarding interpretation (ASL, LSQ and languages other than English and French) and other services to ensure equal access to housing
- attitudinal barriers that underlie program design features (for example, imposing strict reporting requirements because of underlying views that social assistance recipients are fraudulent, or excluding people with disabilities from certain forms of housing because of ableist views that they would be unfit for such housing).

Other consultees indicated that there are circumstances in which housing providers may be seen to have failed in their own duties to design inclusively. Examples are when there are rules prohibiting pets in rental unit apartments that may act as barriers to homeless youth, people with mental illnesses, vision loss and other disabilities.

## **5.2. Adequate and affordable housing**

The United Nations Special Rapporteur on adequate housing, Mr. Miloon Kothari described what he saw during his fact-finding mission to Canada as "very stark



and very disturbing.”<sup>98</sup> In his Preliminary Observations on his Mission to Canada in October 2007, Mr. Kothari spoke of the deep and devastating impact of this national crisis on the lives of women, youth, children and men and that, disappointingly, this crisis exists despite multi-billion dollar federal surpluses every year since 1998.<sup>99</sup>

In his March 12, 2008 Statement on adequate housing, Mr. Kothari proposed the following measures to ensure the protection of the right to adequate housing:<sup>100</sup>

- combination of a humanitarian and a human rights approach to confront inadequate housing conditions and homelessness
- recognition of the right to adequate housing through legislation and policy and through budgetary commitment
- concrete measures to implement this right.

Bill 47, *An Act to establish the right to adequate housing as a universal human right*, passed first reading on March 27, 2008. This Private Member’s bill recognizes that every person has a right to adequate housing, in accordance with the rights recognized in Article 11(1) of the *ICESCR*.<sup>101</sup> Passage of legislation such as this would be a tremendous step towards realizing the rights recognized in the *ICESCR* in Ontario.

Some organizations such as ONPHA and the Co-op Housing Federation of Canada noted that there are already policy tools to promote housing development for protected groups, such as the *Provincial Policy Statement*.<sup>102</sup> While the *Provincial Policy Statement* requires planning authorities to set minimum targets for housing that is affordable to low- and moderate-income households, and to permit and facilitate special needs housing, it was noted that that municipalities set their own housing strategies and often do not carry out the policies because they are not seen as budget priorities. Other submissions and discussions at roundtables indicated that many difficulties in developing a comprehensive and cohesive housing strategy can be attributed to the overlapping jurisdictions of federal, provincial and municipal governments.

While Canada has a unique federal system in which housing is shared across jurisdictions,<sup>103</sup> Mr. Kothari clearly expressed the expectation that levels of government would work together: “Nevertheless, whether federal or provincial, municipality or other authorities, the state should devise strategies to ensure the implementation of the right to adequate housing.”<sup>104</sup>

On April 29, 2005, the provincial and federal governments signed a four-year Affordable Housing Program (AHP) Agreement that is set to expire in 2009. Federal, provincial and municipal governments are investing \$734 million over the life of the program to increase the supply of affordable housing by 20,000 units and provide housing allowances for lower-income families in Ontario (MMAH). MMAH indicated that priority under the AHP is given, but not limited to, Aboriginal people, recent immigrants, persons with disabilities, low-income

seniors, persons with mental illness, victims of domestic violence and the working poor.

Consultees acknowledged that new affordable homes have been built under the AHP, and others are in various stages of construction and development,<sup>105</sup> however, some were concerned about the definition of affordability used. MMAH indicated that rental units under the AHP must charge rents at or below the Canada Mortgage and Housing Corporation (CMHC) Average Market Rent (AMR), and that rental projects must have an average rent that is 20% below the AMR. Views were expressed that these units would still be unaffordable to many people and groups identified by *Code* grounds.

Consultees were also concerned that even with the Affordable Housing Program, the enormous need for affordable housing is still not being met.

This program will not address the huge need for subsidized housing in Ontario. The rents will not be affordable to households on the social housing waiting lists (125,000 in 2004) as they will be set at rates just below average rents in the private sector (Kensington-Bellwoods Community Legal Services).

There were areas in which the current Ontario government's progress on housing for low-income households was applauded. For example, some consultees commented positively on progress made under programs such as the Strong Communities Rent Supplement Program (SCRSP)<sup>106</sup> and the Provincial Rent Bank Program which provides assistance to cover up to two months' rent arrears.<sup>107</sup> Households assisted under the SCRSP are provided with a rent supplement that reduces the amount of rent paid to 30% of their household income (MMAH). MMAH also indicated that currently, more than 6,600 households are receiving rent supplements, of which 1,321 are living in supportive housing units.

On the other hand, concerns were raised about the availability of these programs compared to the number of people in need. In addition, the Commission heard that the eligibility criteria for some of these programs make them inaccessible to people on disability pensions or social assistance. MMAH noted that some service managers allow or disallow social assistance recipients and social housing tenants from accessing rent bank assistance because they already benefit from other programs. The Commission was told that similar eligibility criteria exist for other programs that could otherwise alleviate disadvantage for *Code*-protected groups and individuals.

A case in point is the Rental Opportunity for Ontario Families, or ROOF. Consultees noted that the Ministry of Housing has come up with a catchy acronym, but the eligibility criteria screen out many low-income tenants. The Commission heard that the \$100-a-month benefit is not available to social

assistance recipients or pensioners and that only families with a dependent child under 18 will qualify. Single individuals, childless couples and parents of grown children also need not apply (PACE).

### ***Social housing***

There are over 250,000 units of social housing in Ontario, including public, non-profit and co-operative housing, modified and supportive units. Most of these are funded and administered by municipalities (MMAH). MMAH indicated that it is the responsibility of the province to meet the needs of low-income and vulnerable households, for example by giving priority access for victims of domestic violence, safeguarding the number of modified units for people with physical disabilities, and applying special social housing application rules for homeless persons. The Service Managers Housing Network (SMHN) said that there is a diverse range of social housing and it should not be assumed that social housing is administered the same way province-wide as there are local capacities and priorities. For example, not all social housing is regulated under the *SHRA*.<sup>108</sup>

Consultees indicated that people in social housing are more likely than tenants in the private rental market to be people with disabilities, seniors, sole support parents, new immigrants and racialized people. Tenants in social housing have the “double burden” of low income along with special needs and the associated barriers in society (North Peel and Dufferin Community Legal Services).<sup>109</sup>

Social housing providers spoke about the important role they play in providing access to affordable housing to groups protected by the *Code* and people with low incomes. Social housing fills the gap for low-income people by providing supportive housing, government-funded subsidies and rent-geared-to-income (RGI) housing that would not necessarily be available to tenants in the private sector. However, housing providers indicated that the scarcity of social housing poses a challenge for them in managing eligibility requirements prescribed by the *SHRA* and the administration of the waiting lists (see below).

CERA/SRAC said that social housing must be seen as one among a number of positive measures required of governments to address the unique needs of disadvantaged groups in housing:

From this perspective, additional considerations apply to social housing, such as whether resources allocated by governments for subsidized housing are reasonable and adequate to remedy growing homelessness among *Code*-protected groups, and whether program design is consistent with the obligation to take reasonable measures to prevent the denial of adequate housing to disadvantaged groups.

Many consultees discussed supportive housing. This housing bridges the gap between housing, support services and health care, by providing various programs, including assisted living, long-term care, and/or other services to

tenants. The province directly funds and administers dedicated supportive housing (MMAH). Support services are essential to the full integration into and participation in society, or a housing complex, of people who have been marginalized because of *Code* grounds, and in particular people with mental illness. When available, such services assist tenants in dealing with landlords and other tenants and maintaining housing. The impact of appropriate supportive housing on a person's quality of life can be tremendous:

I spent over 30 years in chronic care simply because there wasn't the proper type of housing for myself as a person with a disability. When the opportunity finally came, I had become so dependent psychologically on that type of model of care; I wasn't prepared to move out. I am now receiving 24-hour attendant care in the support service living unit, and it has changed my life. I feel better in terms of my physical health, my mental health. I am working part-time. I am now able to volunteer in terms of peer support, [at a] rehabilitation hospital. I participate on various boards of directors, things that I had no desire or opportunity to do before (Supportive Housing Tenant).

However, the Commission heard that criteria to access support may be so stringent that people have to be homeless before they are even eligible for service. For people with mental illnesses, the lack of supportive housing may result in continued detention in institutions, even when there is no longer medical justification for such detention.<sup>110</sup> The Commission heard that the people with the most severe disabilities, for whom supportive housing is an absolute necessity, are often turned away because their needs are viewed as being too great. This may lead to institutionalization or homelessness.

The shortage of social housing placements and the operation of waiting lists means that some people may be unnecessarily placed in supportive housing while other people who need specific kinds of supportive housing can't get it. For example, the Commission was told about women being placed into supportive housing when they need housing to escape domestic violence, and people with mental and physical disabilities being placed in housing for seniors where they did not receive the care they needed. In some cases, the Commission heard that landlords, superintendents and other housing providers are put in the position of acting as support workers to tenants with mental health issues because of a lack of appropriate support services. The Commission also heard that lack of support services may be a factor leading to eviction, when a tenant is unable to live independently in his or her unit because such services are unavailable.

A few social housing providers stressed the importance of maintaining and funding housing specialized to meet the needs of particular groups protected by the *Code*. For example, Mainstay Housing indicated that they have staff and tools to help tenants with mental illnesses on their journey to recovery that other landlords and social housing providers do not. These views were echoed by

other housing providers, including the Ontario Association of Non-Profit Homes and Services for Seniors:

Seniors' social housing providers are committed to development and management of housing communities that meet the unique needs of seniors, including social isolation and age-related mobility issues, either in independent housing or in housing with related supports needed to enable seniors to maintain their independence.

Other housing providers noted the importance of ensuring that people with an intersection of grounds receive appropriate services. One participant stated that after devolution from the province to municipalities, many ethnic homes for seniors lost their mandate. This meant that seniors of ethnic backgrounds had to resort to the central housing waiting list to get a unit in any facility, even if those facilities were not equipped to provide what they needed in terms of a suitable cultural living environment.

The Commission heard about problems arising from the consolidation of community support services by several health care providers funded by the province through the Local Health Integration Networks (LHINs). In specific, the Commission was told that services for persons with physical disabilities, including feeding, bathing and toileting and the administration of medication, are being withdrawn from people who live in public housing. As a result, people who have lived independently for decades have been told to move or to simply do without the essential services that they need to live independently.

Consultees also described practical problems experienced by tenants in supportive housing arising from rules about visitors or the use of motorized mobility aids in the building. When tenants with disabilities receive housing and attendant care through the same service, complaints in one area could jeopardize the other, so tenants are unlikely to complain about, and are increasingly vulnerable to, abuse (Hamilton Mountain Community and Legal Services).

Concerns were also raised about rent-geared-to-income (RGI) assistance, which is provided to a social housing provider and administered by a service manager under the *SHRA*. This kind of assistance makes it possible for an eligible family or individual to pay a lower rent that is proportionate to their income. This is an important element in current strategies for making housing more affordable for low-income persons and families. However, the Commission was told that RGI housing requirements disproportionately affect people with mental illnesses.

Many people with mental illness do not have bank accounts, have not filed tax returns, or have had their ID lost or stolen and the application process cannot be completed until all the paperwork is in place. Once a person's name is on the list, the wait time for a one-bedroom apartment can be 18

months or more, and the [housing provider] often sets mid-month entry dates when clients have no money for the extra rent or utility deposits. (PACE).

Another concern that arose with respect to RGI housing programs is that when low-income tenants earn extra income, this is met with a corresponding decrease in the housing subsidy from the social housing provider. In a 2007 report studying systemic poverty released by the Metcalf Foundation, the author indicates that for each dollar earned by an immigrant in Toronto receiving multiple social services, public housing rents go up 30 cents on the same dollar.<sup>111</sup> The author commented that “removing subsidies from poor Ontarians in an uncoordinated way makes it impossible for recipients to achieve a greater self-reliance,” or to escape the poverty trap.<sup>112</sup>

The length of waiting lists for subsidized housing was noted as a concern in the CESC’s recent observations<sup>113</sup> and was raised by both tenant advocates and housing providers in this consultation. Municipalities are accountable to the province and their municipal councils for maintaining the waiting list for social housing (MMAH). The Commission heard that excessive wait times associated with access to affordable housing in both social housing and co-ops means that subsidized housing is not a viable option for a large majority of low-income tenants in Ontario, many of whom are protected under the *Code*. Numerous examples were provided of wait times in the range of 5 – 10 years and drastic changes in the tenant’s circumstances in the intervening years.

During the long wait for an affordable home, few people receive the housing they need when they need it: youth become adults, families grow up, people with serious illnesses or disabilities suffer, newcomers scramble to house themselves and their families, and the elderly and the homeless die (CHFC).

The end result is that many people end up paying more than 50% of their income on rent while waiting. For example, the Catholic Children’s Aid Society of Toronto described a client with two children who has been on a social housing list for nine years and in the meantime is paying more than 70% of her income on rent. Other people do not even bother applying because of these wait times.<sup>114</sup>

The high need for subsidized and affordable housing means that certain individuals will be screened out or wait listed because of the scarcity of the resource (ONPHA). For example, the Commission heard that Aboriginal people seeking housing are often referred to Aboriginal agencies rather than being given priority on social housing waiting lists. However, the disproportionately high core housing need among the urban Aboriginal population means that the demand for Aboriginal-specific social housing significantly exceeds the supply/availability of affordable housing units designated for this population (OFIFC).

Waiting lists are based on date of application, and victims of domestic violence have priority across the province (MMAH). However, the Commission heard that the lengthy waiting lists make such priority status meaningless, as women experiencing violence still may not be in a position to leave when they need to. Women in this situation are forced to make decisions between two bad alternatives with serious consequences for themselves and their children:

*These women engage in a complex decision-making process: Should I try to survive with little economic supports and expose my children to hunger, malnourishment, homelessness, violence, and potentially apprehension by welfare authorities, or should I return to the abusive relationship where my children will have food and a roof over their heads, but where I expose all of us to violence and possibly death? (CERA/SRAC/NWWG).*

Other submissions, including that of MMAH, pointed out that service managers have discretion to identify local priorities to meet the needs of “disadvantaged groups.” For example, SMHN noted that local priorities could include youth who are 16-17 years old, people who are terminally ill and newcomers to Canada. However, due to scarcity of housing, the Commission heard that there are difficulties in setting these priorities and they may be perceived to create inequities.

Balancing the needs of current residents with people on the waiting list is also an issue. The Commission was told that although the goal is to maximize the number of people who can access affordable housing, this can affect people with changing family sizes.

Empty nesters can often move into a smaller unit within their co-op and most co-ops make these transfers a priority. But if the co-op has no smaller units, there is a conflict between the interest of the older adult – who could be forced to leave their home, their friends and perhaps medical supports – and those of the family on the waiting list who needs a larger unit. Clearly these are choices that should not have to be made. The solution is more affordable housing in a wide range of unit sizes (CHFC).

A major theme for social housing providers, including the City of Ottawa, was the extent to which the current level of government funding poses a barrier to their ability to offer spots to people on their waiting lists, and to maintain and repair their units and buildings for existing tenants. OFCMAP noted that the lack of funding results in discriminatory practices, inadequate services, homelessness for clients, and a far greater burden on the health care system and on social services. Even where effective programs exist, the transitory or short-term nature of funding was raised as a concern with implications for housing providers, professionals providing services and people in need of housing.

People in need of housing are angered by long waiting lists and lack of help, while mental health outreach workers are frustrated by the lack of financial and human resources to assist those in need. This frustration is exacerbated by government funding of very short-term housing projects. Workers speak of receiving many more referrals than they can realistically handle, and housing outreach projects build up waiting lists and people's hopes, which are then dashed by discontinuation of funding (PACE).

Many consultees spoke in favour of modifying the chronological approach to waiting lists. Both tenant advocates and housing providers advocated for providing portable shelter allowances or subsidies as an alternative. This is discussed in more detail in section 5.3 "Poverty and inadequate income levels." However, some consultees including the CHFC argued to maintain the first-come, first-served system, with special priority status for victims of domestic violence. The St. Joseph's Care Group described the dilemma housing providers would face if social housing were allocated based on perceived need rather than chronologically:

In our seniors housing project, how would it be determined who had a higher need – a dialysis patient versus someone in a wheelchair, a person with heart problems versus one with dementia? How would it be decided whose need is more urgent? Who would create a chart with a point system to determine who has a higher "score" and thus would get housing more quickly?...A judgment call would have to be made by the provider, leaving them open to accusations of misinterpretation, bias or discrimination based on illness.

### ***Co-operative housing***

The Co-operative Housing Federation of Canada (CHFC) said that "the co-op housing model has proven to be an effective and durable means of providing Canadians with affordable housing." All housing co-operatives in Ontario are governed by the *Co-operative Corporations Act*<sup>15</sup> and many are part of the network of non-profit social housing. For example, about half of the CHFC's Ontario non-profit members are funded under federal operating agreements, while the others are regulated by the *SHRA* and administered by municipal service managers. Co-operatives often combine mixed income housing, in which a portion of units are subsidized. Issues relating to RGI housing programs also arise in co-ops.

The Commission heard that the future of rent subsidy programs provided to co-operatives is uncertain, that many lack the capital reserves needed to maintain their buildings, and that some may no longer be able to offer housing to low-income tenants.

### ***The private rental market***



With an insufficient supply of social housing available, most renters find housing in the private rental market. Tenant advocates expressed concern that discrimination in rental housing in the private market worsens when there is not enough adequate and affordable rental housing. Landlords can afford to be more selective when demand and need far outstrips supply, without fearing high vacancy rates (OASW). Human rights impacts of commonly used screening tools are described in section 4.2 “Tenant screening practices.”

There are no controls on rent increases when a new tenant moves in – the landlord and tenant can agree on any amount (MMAH).<sup>116</sup> Tenant advocates, including ACTO, were concerned about this and expressed the view that vacancy decontrol has led to a rapid decrease in the number of affordable housing units in Ontario. Parkdale Community Legal Services submitted that:

... people moving into the rental market – disproportionately immigrant newcomers, families seeking larger accommodation, youth or students – must pay a significantly higher rent than the previous tenant. This creates a financial hardship for those tenants who generally are least able to afford high rents.

Tenant advocates also noted that, as a consequence, landlords may have a financial incentive to evict tenants from affordable apartments or to be less willing to work out payment plans for arrears when they know they can charge a new tenant higher rent. Impacts on older tenants and newcomers are described in section 4.1. “Highlighting discrimination based on specific *Code* grounds.”

On the other hand, FRPO, EOLO and other housing provider associations argued that the supply of rental housing is negatively affected by rent controls because property quality declines when landlords are unable to increase rents to keep pace with wages, capital, taxes, interest rates and utility costs. They also submitted that rent controls artificially lower prices and that the most affordable units are kept by households that could afford market rents, thereby shutting lower-income tenants out of a tightened rental market. EOLO told the Commission that factors associated with rent controls result in less access to housing by disadvantaged groups, rather than more.<sup>117</sup>

Much of the discussion about housing in the private rental market focussed on rooming houses and basement apartments. Rooming houses play an important and viable role in meeting affordable housing needs of people protected under the *Code* who are unable to afford conventional housing.<sup>118</sup> The Commission heard that across Ontario, many marginalized groups such as low-income individuals, seniors, students, newly arrived refugees and immigrants, and people with disabilities, including mental health concerns, rely on rooming houses for accommodation (Rupert Coalition).

The Rupert Coalition defines a rooming house as “any building in which renters occupy single rooms and share kitchens, bathrooms and common areas. Rent in licensed rooming houses ranges from \$400 to close to \$600 a month, making rooming houses the most affordable form of permanent accommodation available for low-income single people.” The submissions received confirm that the trends noted in *The Report of the Mayor’s Homelessness Action Task Force: Taking Responsibility for Homelessness (Golden Report)* almost 10 years ago still hold true today:

Rooming houses and accessory apartments play a critical role in the housing market, one which is taking on added significance as other options continue to disappear. With cutbacks in social assistance, the termination of new social housing programs, and low vacancy rates in the rental apartment sector, rooming houses and second suites have become a permanent way of life for many individuals and families. They are no longer a temporary form of housing.<sup>119</sup>

Consultees, such as Project Connect, emphasized that when housing placement workers are looking for housing under \$500 per month for clients with low incomes or on social assistance, rooming houses may be the only option. For many, a rooming house may be the last permanent housing option before homelessness (Rupert Coalition).

While rooming houses may be the most viable option for individuals and families with low incomes, far too often, they do not provide a safe, comfortable home. As a result of restrictions on legally registered rooming houses, the Commission heard widespread concerns about the growth of un-regulated and un-inspected rooming houses to fill this void in the housing market and the substandard rental conditions their occupants may be subjected to. For example, PACE noted common problems that make rooming house tenants feel desperate and helpless such as mice and other rodents, thefts by other tenants, poor wiring, heating and insulation and disrepair.

Landlords and tenant advocates were concerned about NIMBY opposition to developing affordable housing in the private market, such as rooming houses, basement apartments and high-density housing. These kinds of issues are discussed in section 5.5 “Discriminatory NIMBY opposition to affordable housing.”

Many consultees suggested that basement apartments and secondary suites, when appropriately regulated, provide a safe and affordable housing option in the private rental market. MMAH pointed out that municipalities may establish second unit policies without appeal to the Ontario Municipal Board. However, other consultees indicated that in the past, there has been legislative support for creating good quality basement apartments and second suites.<sup>120</sup> The Commission heard that some tenants with low incomes rent “illegal” basement

apartments that do not comply with municipal zoning by-laws and do not meet health and safety standards. These tenants are at heightened risk of homelessness if this comes to the attention of the local authorities.

[O]nce the local bylaw departments discover the rental units, the departments order the tenants to vacate the units on very short notice. Tenants in this predicament find that they are powerless to challenge these orders and are at immediate risk of homelessness. Given these dire consequences, tenants in these illegal units are reluctant to assert their rights under the *RTA*, nor do they complain to bylaw, health and fire departments even when there are serious concerns about these units (Community Legal Clinic of York Region).

Private landlord associations submitted that conversion policies, which prevent the demolition, redevelopment and intensification of old rental buildings, have a detrimental effect on increasing the supply of rental housing. FRPO stated that these policies create a barrier to the supply of affordable housing by reducing the number of available affordable home ownership opportunities for tenants, discouraging capital investment in older buildings and deterring investment in new rental housing. Conversely, some consultees argued that conversions result in a decrease of available rental housing supply, because it is more profitable to convert rental properties into homes for ownership.

In Cabbagetown, which has experienced gentrification like perhaps no other area in the city, the number of rooming houses has decreased dramatically. The former rooming houses have been re-converted into single family homes. This is fine as it goes. However, our experience is that the new homeowners have become, at times, simply anti-rooming houses, not wanting “those people” in their neighbourhood and being concerned primarily with property values (Project Connect).

Several landlords and associations said that the tax rate on multi-residential units creates barriers to affordable housing for low-income people. According to the London Property Management Association, multi-residential housing units are taxed 2.5 times higher than owner-occupied dwellings. As a result tenants, many of whom are lower income and protected under the *Code*, end up paying proportionately more tax through rent payments than do homeowners. FRPO advocated for equalizing the tax rate for homes and multi-residential properties (over six units) with costs distributed across all property classes to encourage more rental housing development.<sup>121</sup>

### ***Inadequate housing and the admission of children into care***

The Commission was extremely troubled to hear that children in Ontario continue to be relinquished or apprehended by children’s aid societies because of inadequate housing – concerns that were previously noted by the CESC. <sup>122</sup> Consultees connected this issue to *Code* grounds such as family status, receipt

of social assistance and race. Recommendations have already been made that government collect statistical data relating to the relinquishment to foster care of children belonging to low-income families, single mother-led families, and Aboriginal and African-Canadian families, to accurately assess the extent of the problem. It was also recommended that the federal, provincial and territorial governments undertake all necessary measures, including financial support, where necessary, to avoid such relinquishment.<sup>123</sup> The Commission heard that despite these recommendations, this is very much still an issue in communities across our province.

Although inadequate housing or housing problems are not sufficient grounds to consider a child in need of protection under the *Child and Family Services Act*,<sup>124</sup> in practical terms housing increasingly plays a role in outcomes for families. CAST pointed out that their economically disadvantaged clients face substantial obstacles to obtaining adequate and appropriate housing and that, for some of them, this affects their ability to care for their children. As one children's aid society noted:

Although our agency has been reluctant to admit children into our care solely because of inadequate housing, we have had to do so and cannot discharge these children until we are satisfied that they will be in safe environments.

Participants in the roundtables commented that a major factor contributing to the separation of parents from their children is the combination of legislation and policies applied by children's aid societies and housing providers. For example, the Commission was told multiple times about situations where a parent cannot get children back from care until they are suitably housed, but are ineligible for suitable housing until they have their children back. The Commission also heard that because of the shortage of appropriate housing and the availability of services, families live in shelters – thereby delaying the return of their children.

A research study conducted in 2000 showed that in 20% of cases, a family's housing situation was a factor resulting in the temporary placement of a child into care. That same year, in 11.5 % of cases, the return of the child was delayed due to housing-related problems. Housing was a factor in 26% of the cases where parents voluntarily agreed to have their children placed in care and in 74% of apprehensions. Since 1992, there has been an increase in the percentage of cases in which housing was a factor in decisions to place a child in care or delay the child's return to the family.<sup>125</sup>

### **5.3. Poverty and inadequate income levels**

Human rights violations in housing are often connected to poverty and income. Although social condition is not a ground under the *Code*, discrimination relating

to poverty has been addressed through *Code* grounds where there was a demonstrable link between poverty and those grounds. For example, the link between poverty and *Code* grounds such as race, sex and family status, was noted in *Kearney v. Bramalea Ltd.*<sup>126</sup> In general terms, the *Code* may be brought into play when the low income is connected to grounds such as race, family status, age, disability or being in receipt of public assistance, such as Ontario Works (OW) or Ontario Disability Support Program benefits (ODSP).

Consultees were concerned that people identified by *Code* grounds such as age, sex, disability (including mental illness), family status, receipt of public assistance and race, place of origin and citizenship (including refugees and immigrants) are disproportionately counted among persons living in poverty. Some consultees referred to international criticisms that poverty rates in Canada remain very high among disadvantaged and marginalized individuals and groups such as Aboriginal people, African-Canadians, immigrants, persons with disabilities, youth, low-income women and women who are lone parents.<sup>127</sup>

Lower-income tenants have fewer choices in the rental market because many of the housing options are out of their price range. On top of this, it was noted that 31% of low-income households move per year compared with 27% of higher-income households (CERA/SRAC). Research studies have shown that a large proportion of landlords prefer not to rent to people with low incomes,<sup>128</sup> which further reduces the choices of units available to them. The Commission heard that the tenants with the lowest incomes are often forced to rent apartments that are inadequate and poorly maintained, yet more expensive than others.

A newcomer with children, with no credit or references, who would be disqualified by income criteria and is vulnerable to hidden racism, will find that only a few apartments in Toronto do not disqualify her. She will find that she will have to pay far more for an inadequate apartment than other tenants (CERA/SRAC).

Concerns were also raised about the interpretation of the provisions of the *RTA* within the framework of the *ICESCR*, particularly in relation to evictions for minimal arrears and the impact of this on low-income tenants.<sup>129</sup>

### ***Strategy to address poverty needs human rights focus***

The provincial government's most recent throne speech, delivered by the Honourable David C. Onley, Lieutenant Governor of Ontario on November 29, 2007, referred to the commencement of work on a strategy to reduce child poverty.<sup>130</sup> A cabinet committee has been established to develop poverty indicators and targets and a strategy for making clear-cut progress on reducing child poverty and lifting more families out of poverty.<sup>131</sup>

The Commission is pleased to see that the scope of the Poverty Reduction Strategy has been expanded to include both children and their families. However,

the Commission is concerned that a large number of other persons, many of whom are protected under *Code* grounds, are also living in poverty.<sup>132</sup> It is also of concern that the announced strategy is not explicitly aimed at addressing the concerns noted by the Committee on Economic Social and Cultural Rights (CESCR) in its past three reviews and implementing recommendations that are within the jurisdiction of the provincial government. For example, the CESCR recommended increasing shelter allowances and social assistance rates to realistic levels.<sup>133</sup>

These concerns were also shared by some consultees who noted that the failure by governments of all levels to take meaningful steps to alleviate poverty results in continued disadvantage for people who are lone parents, racialized and have disabilities and others protected by the *Code*. The key example provided by many was the relinquishment of children to children's aid societies as was discussed above.

### ***Social assistance and living wages***

Participants in the consultation expressed the view that recent increases to social assistance and minimum wage rates,<sup>134</sup> while welcome, have not been sufficient to enable tenants who rely on these forms of income equal access to housing opportunities. A number of consultees stated that social assistance recipients are worse off today because rate increases have not kept pace with inflation and rent increases.

In Ontario, social assistance rates were cut back 21.6% in 1995, and small increases in the past several years have failed to address the discrepancy between income and rent. A single person in 1995, for example, received \$663 per month. Today they receive a monthly income of \$560. When the rate of inflation is factored in, along with high rent increases, there is an approximate 40% loss of income (Housing Help Centre).

ACTO and other consultees pointed out that the vast majority of people on social assistance rent housing in the private rental market.<sup>135</sup> The Commission heard that this means that people on social assistance end up being unable to compete for quality housing at average rents because of their insufficient income. For example, as the Alliance to End Homelessness pointed out, in 2006, Ontario Works benefits for a single person were \$548 per month while average rents were \$633 for a bachelor and \$774 for a one-bedroom apartment. Similarly, the maximum shelter allowance for a single person under ODSP is \$346, while on average it costs \$787 to rent a one-bedroom apartment in Ontario<sup>136</sup> (PPAO).

Similar concerns were raised about programs such as Extended Care and Maintenance (ECM) that help Crown Wards prepare for independent living. These programs are funded by children's aid societies from their general provincial allocations, but the permitted monthly allowance of \$663 is too low for youth leaving care to find housing in a safe and supportive environment (CAS,

London & Middlesex). The long-term consequences of the failure to provide adequate funding and support for Crown wards leaving care can be significant both for the individual youth and for society at large. There may be increased costs associated with welfare, criminal justice, health and mental health services.<sup>137</sup>

Once housed, the lack of sufficient income creates difficulties for tenants in keeping housing and in paying for other costs of living. Where rents are above the shelter allowance allocated by OW and ODSP, individuals on social assistance have to dip into their basic needs allowance to pay their monthly rent or are forced to look at other forms of housing, such as motels or “couch-surfing” (Algoma Community Legal Clinic). These households use a significant portion of their food money to pay rent and often use food banks to feed their families. Young parents are forced into market rent housing that is unsuitable, unsafe, unhealthy and unaffordable – leaving them little money to meet their families’ other needs (Humewood House). A tenant on ODSP told the Commission that she has had great difficulties keeping her apartment as the housing costs are higher than what she can realistically afford.

Participants in the roundtables had vigorous discussions about the impact of clawbacks on social assistance recipients and their families. For example, when a child reaches age 18, this results in a loss of income for his or her family and can affect the family’s ability to stay in social housing.<sup>138</sup> However, as is discussed in section 4.1 “Highlighting discrimination based on *Code* grounds,” this young adult would likely face barriers and discrimination in accessing suitable housing in the rental market, and is at risk of homelessness or being under-housed. Recommendations have been made that authorities responsible for public housing, Ontario Works, child care, student aid and other student supports work together to develop a transition planning system to enable eligible young adults to stabilize their own income and that of their families.<sup>139</sup>

Minimum wage earners are similarly disadvantaged in the rental market because of incomes that are insufficient to pay for average rents across the province. Consultees expressed concern that the current minimum wage of \$8.00/ hour is not a living wage and that a person working at minimum wage full-time for an entire year will not earn enough to escape poverty.<sup>140</sup> In Ontario, the minimum wage is set to gradually rise to \$10.25/ hour in 2010.<sup>141</sup> However, advocates for income security had been seeking an immediate increase to \$10.00 in 2005, indexed to inflation.<sup>142</sup> It therefore appears that the concerns raised in the consultation and internationally about the standard of living for minimum wage earners may not yet have been fully addressed.

As many consultees pointed out, minimum wage earners often identify by *Code* grounds. For example, statistics show that “workers of colour”<sup>143</sup> and women are disproportionately represented among people earning minimum wage.<sup>144</sup> In addition, the Commission was told that the “working poor” find it difficult to locate

affordable housing, and are refused housing because they cannot meet the rent deposits or income criteria required by landlords. See also section 4.2 “Tenant screening practices.”

It was also noted that women comprise a large portion of people who are working part-time, in many cases because of caregiving responsibilities. They are in great need of access to a decent living wage as well as other employment benefits such as health and long term disability insurance. However, CERA pointed out that in Ontario, there is no legislation requiring employers to provide benefits to part-time employees on a pro-rated basis and the practice of employers is mixed. The result is that many workers and their families are denied any protection from sudden loss of income due to disability, placing them at a much higher risk of homelessness.

Social assistance and minimum wages rates must be linked to the real cost of rental housing with a view to complying with international obligations and substantively addressing criticisms of Canada’s compliance with them. However, many of the CESCR’s 1993 and 1998 recommendations still have not been implemented and a number of serious concerns about income levels still remain.<sup>145</sup> These include:

- the absence of a legally enforceable right to adequate social assistance benefits for all persons in need on a non-discriminatory basis
- negative impact of certain workfare programs on social assistance recipients
- insufficiency of minimum wage and social assistance benefits to ensure the realization of the right to an adequate standard of living for all
- social assistance benefits that are lower than a decade ago, that may be less than half the low income cut-off, and that do not provide adequate income to meet basic needs for food, clothing and shelter
- the “discriminatory impact” of the National Child Benefit “clawback system” on the poorest families in Canada, particularly those led by lone mothers
- shelter allowances and social assistance rates that continue to fall far below average rental costs.

### ***Impacts of low income***

A number of consultees, including the Alliance to End Homelessness, linked the risk of homelessness to the growing gap between social assistance or wages earned in minimum wage jobs and the poverty line. Many low-income tenants end up paying more than they can afford for housing, to the detriment of other important needs such as food or clothing. The CAS, London & Middlesex gave the example of a youth who used almost his entire monthly allowance to pay rent in an appropriate setting away from drug use and dealing, leaving him with almost no money to meet his other daily needs.

Other tenants are resigned to accepting housing that, while cheap, imposes unsuitable living conditions on them and their families. As PACE noted, the view



of many tenants is “you have to take what’s given to you” even if that means living in dank, dark basement apartments, foul rooming houses or dilapidated market rental units. Key complaints about quality of housing related to rooms or apartments that need a lot of repair in areas that are run down, polluted or affected by high rates of criminal activities such as drug dealing.

The Commission heard about the systemic failure of housing providers and responsible governments to maintain basic property standards, such as keeping units heated in the winter or installing safe windows or balcony railings, in areas occupied by low-income tenants. This results in low-income individuals and families being denied the right to enjoy equality with respect to their occupancy of accommodation, inconsistent with international human rights obligations (CERA/SRAC).

The Commission also heard about perceptions that LTB adjudicators hold the following attitudes towards tenants who pay low rent:

- thinking they cannot expect the same level of maintenance and repair from a landlord as tenants who pay more
- devaluing damage to a tenant’s property because they are poor while not doing the same for damage to a landlord’s property
- viewing landlords’ concerns as more important than those of tenants, especially people who do not speak English or French as a first language.

### ***Portable housing allowances and other ways to increase access to housing***

A number of consultees suggested raising social assistance rates and the minimum wage to levels that would allow families to secure proper housing even in the private market. Other consultees recommended improving mechanisms to help social assistance recipients transition from receipt of benefits to employment, or to reduce the deductions from the income received by people on social assistance.

Consultees noted that increases in the shelter allowance may help some people secure housing, but that a more proactive approach to addressing the needs of all low-income people is necessary. There was wide consensus among both housing providers and tenant groups that a viable option to enable low-income tenants to compete equally in the rental market is to provide portable housing allowances directly to the tenants to enable them to rent their choice of housing.<sup>146</sup>

MMAH indicated that housing allowances are one of four components of the AHP, along with rental and supportive housing, home ownership and Northern Housing. They aim to create affordable rental housing in rental markets with high vacancy rates, and are meant to bridge the gap between the rent that a household can afford to pay and the actual market rent.

Other consultees told the Commission that portable housing allowances target people in the greatest need, and avoid the discriminatory exclusions of youth, newcomers and others that are endemic to a system based on chronological waiting lists for designated social housing units.

This would allow the tenants much greater flexibility in the choice of unit available to them – the same flexibility enjoyed by tenants who do not have financial hardship as their “disability.” Tenants are sometimes forced to endure poor living conditions or relations with neighbours because they simply cannot afford to lose their subsidized unit. If the rent supplement was assigned to them and not to the unit, they could move to a better situation without fear of losing the affordability of their housing (Waterloo Region Community Legal Services).

Housing provider associations like the EOLO and FRPO agreed that there are a number of benefits to offering low-income households a top-up allowance to bridge the gap between income levels and market rent prices. For example, portable housing allowances can provide immediate assistance to tenants and may help people avoid long waiting lists for social housing. They also allow tenants to choose where they live, and encourage mixed-income neighborhoods. Housing allowances can be provided directly to the tenant to give to the housing provider, maintaining the tenant’s privacy and autonomy over their income, and can be used in rural areas and small towns where there are few subsidized units.

...I think housing allowances would be a good choice because they allow the low-income tenants to rent in buildings that are occupied by people at other income levels. They also allow low-income tenants mobility, in that they can rent wherever they choose, they need not be isolated in one general area of the city (Landlord, 50-99 units).

Housing providers also noted that that rent supplements or portable housing allowances can be provided without the landlord or neighbours knowing and can allow tenants to avoid any stigma attached to living in public or social housing. Finally, the Commission was told that such programs can be administered at low cost compared to the costs of building new social housing, and allow flexibility in program design to respond to different regional needs and provincial budgets.

## **5.4. Homelessness and human rights**

Although the causes of, and solutions for, homelessness are complicated, it is squarely a human rights issue. People identified by *Code* grounds such as disability (including mental illness and addiction), race and race-related grounds (including people who are Aboriginal) and family status are more likely than others to experience homelessness.<sup>147</sup> For example, ACTO pointed out that

Aboriginal persons are over-represented in Canada's homeless population by a factor of 10.<sup>148</sup> The Canadian Mental Health Association, Ontario said that individuals with serious mental illness are at increased risk of becoming homeless, that 30 – 35 % of the homeless population in general, and up to 75% of homeless women specifically, have a mental illness.<sup>149</sup> The Commission also heard that people with mental illness also remain homeless for longer periods of time.

Consultees emphasized that homelessness is not just an issue for people living on the street – people who rely on temporary housing provided by friends and families (“couch surfing”) or who sleep in shelters are still homeless. Increasing numbers of children and women now rely on shelters to temporarily meet their housing needs.<sup>150</sup> The Commission also heard that people being released from the criminal justice system tend to stay in shelters during their first month or two although a shelter stay has been associated with increased risk for re-incarceration (John Howard Society of Toronto).

Consultees talked about the wide range of factors leading to homelessness, including municipal, provincial and federal policies and programs, de-institutionalization and situational issues. For many, situational problems are made worse by the existence of *Code*-protected characteristics such as race, disability, sex, receipt of public assistance and family status and the associated poverty.

Families and individuals can lose their housing for any number of reasons: losing a job, having an income too low to stay in their homes or fleeing abuse. Added complications for some are problems associated with physical or mental health issues or substance use (Alliance to End Homelessness).

The John Howard Society of Toronto pointed out that release from incarceration is a significant factor contributing to homelessness.<sup>151</sup> The Commission was also told about the barriers to housing experienced by people who are incarcerated and then released. The shelter allowance portion of OW or ODSP benefits are not continued during incarceration, which means that people are more likely to be homeless on discharge, especially since benefits are not reinstated until after discharge.

The lack of assistance finding housing available to people leaving hospital or jail was raised as an issue by a few consultees, including the PPAO.<sup>152</sup> People are often discharged without any money, transportation allowance, clothing other than their prison jumpsuits, identification or services to help them reintegrate successfully into the community. People in this situation are unlikely to be able to compete for housing in the rental market, which means that they have to live on the streets, in shelters or with friends (when possible) while getting re-established

in the community. For some, the resulting stresses lead to re-offence (John Howard Society of Toronto).

CERA/SRAC expressed the view that homelessness and the violations of the right to housing in Canada have resulted from cut-backs to social assistance and social housing, and the failure to take any appropriate measures to address the problem and to address homelessness as a violation of human rights. In addition to the CESCR, other international human rights bodies have raised concerns about homelessness as a violation of fundamental rights.<sup>153</sup>

The Commission also heard that widespread discrimination against people who are homeless prevents them from accessing affordable housing even when it is available.

People who are homeless are turned away simply because they are homeless ... landlords won't rent to people from shelters, thereby increasing the time they are homeless ... When families and individuals become homeless, the discrimination against them increases exponentially in housing and employment and places a greater strain on the waiting list for social housing (Housing Help Centre).

### ***Strategies and solutions to address homelessness***

People who are homeless are at higher risk of death due to a combination of a higher risk of health problems, poverty and, at times, inadequate access to health care.<sup>154</sup> Even for people who manage to survive while homeless, the interference with the performance of daily life activities essential for human well-being is significant. One tenant noted that it is impossible to get a job if you are homeless.

Organizations such as the Rupert Coalition commented that having a safe place to live is a vital part of stability and recovery from the mental illnesses and addictions that affect so many homeless people.<sup>155</sup> Research has also shown that being homeless increases the duration and seriousness of a mental illness.<sup>156</sup>

Given the severe consequences of homelessness, it is imperative that action be taken to address and prevent homelessness as an urgent human rights issue. The Commission's position is that there are many possible ways to tackle this difficult issue. However, the starting point must be a willingness to act on the numerous reports that have been written on this topic, an acceptance of the existence of widespread systemic human rights violations as a factor contributing to homelessness, and a commitment to substantively address international criticisms of homelessness in this province and country. The following are some of the ideas raised on this topic.

CERA/SRAC proposed implementing a human rights strategy to address homelessness as a violation of the right to equality under the *Code*. The

homelessness strategy they described would address the “intersection of employment and housing equality and challenge growing barriers facing disadvantaged groups in securing adequate and stable income necessary to securing and maintaining adequate housing.” This approach is fundamentally based on key principles such recognizing adequate housing as a fundamental human right, the need for positive measures to ensure equal access to housing for *Code*-protected groups and the right to effective remedies.

Consultees, such as the Rupert Coalition, submitted that efforts to increase the availability of rooming houses can have an impact on homelessness because rooming houses provide an important source of affordable housing for low-income tenants.<sup>157</sup> Such measures would need to take into account the complex regulatory framework that exists.<sup>158</sup> See also section 5.2 “Adequate and affordable housing.”

The OASW said that concrete actions must be taken to actively counter the “dehousing mechanisms” at work in society. This would include creating an action plan with targets for addressing and preventing homelessness. A key element in any such actions would be the need to consider international requirements and criticisms. For example, the CESCR welcomed the National Homelessness Initiative and the adoption of other measures on housing, but regretted that the information provided was not sufficient to assess the results of such measures. In particular, the CESCR was concerned that the estimated number of homeless persons in Canada still ranges from 100,000 to 250,000.<sup>159</sup> It was also recommended that specific consideration be given to the difficulties faced by homeless girls.<sup>160</sup>

The Commission heard about the need for a multifaceted approach that provides for increased income levels, services and higher quality housing. One consultee referred to a study that showed the positive impact of these on housing in the community studied:

A report from a panel study on the Ottawa homeless population over a two-year period showed that factors such as higher income, access to subsidized housing, assistance from community workers and organizations, support of roommates, an appropriate on-going “basket” of complementary services and supports helped them become housed. Living in better quality housing in terms of comfort, privacy and space was related to higher levels of mental health (Alliance to End Homelessness).

## **5.5. Discriminatory NIMBY opposition to affordable housing**

A number of consultees linked Not-In-My-Back-Yard (NIMBY) opposition to attitudes such as “I don’t want any of those people living near me” or “we’ve

already got our fair share” of a particular type of affordable housing. The Commission has previously stated that persons and groups identified under the *Code* should not have to ask permission from prospective neighbours before moving in.<sup>161</sup> Concerns about affordable housing projects should be legitimately anchored in planning issues rather than stereotypical assumptions about the people for whom the housing is being built. Efforts to keep out persons with disabilities, including mental illness, are no less offensive than preventing racialized persons from moving into a neighbourhood.

The Commission heard that discriminatory NIMBY opposition delays affordable housing development, increases its costs and diverts public funds to costly appeals to the Ontario Municipal Board, when these funds could instead be used to create more affordable and supportive housing. It may cause housing providers to feel they need to make compromises to get affordable housing built, even when these compromises undermine the dignity or well-being of their residents. Alternatively, the Commission heard that housing providers may be discouraged from developing affordable housing because of NIMBY opposition. In some cases, *Code*-protected people are exposed to harassment throughout the planning process, and end up feeling unwelcome once they move into their new neighbourhood. Some consultees spoke about the impact of political opposition and delay tactics, sometimes called “NIMTO” (Not-In-My-Term-of-Office).

NIMBY opposition to affordable housing projects can violate the *Code* when it results in changes to existing planning processes, barriers to access to housing or exposes proposed residents to discriminatory comment or conduct. For example, claims of discrimination could arise if a municipality requires additional public meetings or amendments to the planning process solely because the intended residents of a proposed housing project are people with addictions, youth or older people, lone parents, in receipt of social assistance, or people with disabilities including mental illnesses. When planning policies or practices are directed towards, or disproportionately affect, *Code*-protected populations, they may be seen to violate the *Code*. The most common forms of NIMBY opposition and their human rights impacts as described by consultees are summarized below.

***Zoning definitions that are used to zone out or restrict access to certain people protected by the Code***

Zoning definitions allow some land uses to be included in, and others excluded from, a particular area based on their physical characteristics and function. A wide range of consultees expressed concern about the use of zoning definitions to exclude certain *Code*-protected groups from living in particular areas. For example, concerns were raised that such definitions can be used to reduce the sites available for supportive housing for a protected group, or subject it to additional requirements or a lengthier approvals process (HomeComing Community Coalition). A distinction was drawn between this kind of zoning

definition and those in municipal by-laws that are linked to benefits such as fast-tracked approvals for supportive housing. MMAH indicated that a zoning by-law is invalid if its purpose is to regulate the user, as opposed to the use of land, or define the use by reference to personal characteristics.

### ***By-laws that limit or ban certain affordable housing developments***

Concerns were raised about by-laws that aim to keep out certain types of housing developments while allowing others. For example, the Commission heard that zoning by-laws and policies in municipalities across the province prohibit rooming houses in certain neighbourhoods. Consultees such as Project Connect told the Commission that these kinds of zoning by-laws mean that people who rely on rooming houses, and who may be protected by *Code* grounds, are effectively denied a place in the community of their choice. They may also have to accept housing that does not meet their needs, whether because the living conditions are substandard or because it is far from their supports, family members and social networks (Rupert Coalition).

Consultees expressed the view that a by-law that prevents all residential development in a specific zone would be acceptable as it does not have discriminatory impacts. However, a by-law that does not allow rooming houses, group homes or subsidized housing developments for persons protected under the *Code*, while allowing other residential development of similar scale, would be discriminatory. For example, some municipalities prohibit any new social housing, group homes, crisis care homes, lodging homes or rooming houses from being built in an entire neighbourhood. This affects people with disabilities and people in receipt of social assistance. Other municipalities distinguish between housing for psychiatric survivors living in the community and people who were formerly inpatients at a local provincial psychiatric hospital (Individual consultee).

### ***Distancing requirements and development moratoria***

A number of municipalities across Ontario have some type of distancing requirements for group homes and other housing options for people with disabilities. MMAH said that the use of separation distance requirements should be justified on a rational planning basis, passed in good faith and in the public interest.

The Commission heard that distancing requirements, caps or quotas restrict or limit where housing for people with disabilities or on social assistance can be built and may have discriminatory impacts. Consultees told the Commission about the following kinds of limits that exist in municipal by-laws across the province:

- maximum number of tenants in group homes or homes for special care
- maximum number of group homes in a residential area
- maximum number of group homes per number of people in total population, per neighbourhood, per lot or municipality.

Such requirements limit the sites available for group home development, and may force housing providers to turn away otherwise ideal housing opportunities. For example, the Commission heard about a couple who wanted to donate their home to an organization that provides housing and supports to people with developmental disabilities. The organization had to turn down this opportunity to create new supportive housing because there was already another group home



in the neighbourhood. The Commission was told that such distancing requirements present a barrier to housing for people with disabilities, even where the neighbours are in support of the housing.

The Commission heard that development moratoria, or by-laws temporarily freezing development of land for a maximum of two consecutive years, restrict when affordable or supportive housing can be built. Consultees indicated that they have the same effect as distancing requirements where they limit the development of housing that predominantly serves protected groups or individuals. MMAH noted that municipalities' powers to prepare such a by-law are typically exercised in a situation in which unforeseen development issues arise with the terms of an existing zoning permission, and that anyone who is given notice of such a by-law may appeal to the OMB.

***Public consultation not required under the Planning Act***

As the Chief Commissioner noted in a November 14, 2007 letter to the editor of the Toronto Star, “questions about land use are a legitimate part of the planning process. However, meetings that allow people to determine who lives in their neighbourhood are another matter.”<sup>162</sup> The Commission heard quite a bit about this other kind of meeting in the course of the consultation.

MMAH noted that the *Planning Act* requires, as a basic principle, that the public be given an opportunity to present its views at a public meeting on certain land use planning matters. This was said to be in keeping with the “philosophy of an open and transparent planning system.” However, the Commission was told that affordable and supportive housing developers may be required to participate in expensive and lengthy public consultations that are not set out in the *Planning Act* or in a municipal by-law.

In some cases, the Commission was told that such meetings are required by local councillors, municipal staff or even committees of adjustment when a development seems “controversial” – even if the only controversial element is the characteristics of the people who will live there. Some consultees questioned the utility of these kinds of extra meetings in overcoming fears and false stereotypes, and noted that they seem to wrongly empower neighbours to believe that they are entitled to stop or delay unwanted people from moving into the neighbourhood (HomeComing Community Choice Coalition).

Consultees also spoke against requiring public notification or consultation requirements for “as-of-right” housing developments for protected groups (*i.e.* those for which zoning changes are not required). The concern about these kinds of requirements is three-fold: first, that the project is being singled out for additional requirements because it is geared towards vulnerable people who may be protected under the *Code*; second, that they add additional obstacles to creating affordable housing; and finally, that people protected by the *Code* may

be exposed to discriminatory comments and conduct at such meetings. As Project Connect put it:

Sometimes, when there are community consultations sponsored by the city around affordable housing in Toronto, it has become a prime opportunity for people to express views that are plainly discriminatory. Also, however, behind code words like property values and safety (around a rooming house license “I don’t want those pedophiles near my kids”), people regularly oppose any kind of low-income housing. In addition, it is not unusual to hear: “I’m for it – just not here.” Because this kind of process can foment discriminatory views in public, these kinds of consultations need to be managed differently. As it is, the process for approval can become painful and longer (and thus more expensive for the housing provider).

People protected under the *Code*, and persons advocating for housing on their behalf, are sometimes exposed to inappropriate comments and abuse. This may occur at meetings led by municipal staff or councillors, through websites or pamphlets, posters or flyers. Municipalities and elected officials are expected to ensure that poisoned environments contrary to the *Code* are not created at their meetings. Yet, concerns were raised that municipal councillors may use the same discriminatory language as their constituents and be wary about restricting opportunities for discriminatory comments to be made on the basis of free speech.

The rationale for permitting this abuse is that it represents free speech and true community feeling. For example, at Toronto City Council many councillors voted against a Planning Department recommendation that would have enforced human rights and equity principles at public meetings because they did not want to muzzle their constituents (HomeComing Community Choice Coalition).

Throughout the consultation, the Commission heard about infringements of dignity caused by the following types of comments and conduct at community meetings:

- hundreds of people shouting out objections to having people with mental illnesses move into their neighbourhood
- people with mental illnesses being characterized as rapists, murderers, pedophiles and terrorists
- representatives of community organizations or housing providers, who themselves may be protected under the *Code* because of mental illness or another ground, being ignored or exposed to offensive comments
- young single mothers being told to “get a husband.”

### ***Design compromises or requirements and community contracts***

A number of consultees, including the CMHA, Ontario recognized that design compromises are a normal part of development. However, it was noted that

human rights concerns arise when opponents and neighbours demand compromises based on prejudices or fears about the people who will move in.

Sometimes these requirements are part of a municipal by-law or are requested by Council, a Council Committee, or a Committee of Adjustment as a condition of planning approvals or funding or by an individual councilor as a condition for supporting the project. These compromises and requirements may contravene the *Code* when they stigmatize tenants protected by *Code* grounds, or undermine their dignity and prevent their natural integration into the community.

For example, the Commission heard that providers of affordable and supportive housing have been asked to:

- ensure that windows could not be opened by tenants
- frost all windows to prevent tenants from looking at their neighbours
- remove balconies that might allow tenants to overlook their neighbours
- add visual buffering around group homes
- maintain walls that separate affordable housing from neighbouring homes
- blockade or remove gaps in a row of affordable townhouses designed to allow tenants access to their own cars
- bar entrances with iron gates to keep tenants in at night
- add fences, walls, gates, driveway detours or other barriers that prevent protected groups from accessing natural routes to and from their homes.

The Commission also heard that some municipalities require or recommend that housing providers sign contracts with their neighbours as a condition of occupying a building. It was noted that housing providers feel pressured to sign these documents as a sign of goodwill or to retain the local councillor's support, but that they have the effect of undermining the dignity and privacy of protected groups. Contracts or requirements that impose extra obligations on housing for protected groups may be discriminatory and could give rise to human rights challenges.

For example, the managers of a house for homeless people agreed to report the incomes of all their residents to their east end Toronto neighbours every year. The neighbours had said they wanted to "monitor" residents to ensure no-one received a subsidy they did not deserve (HomeComing Community Choice Coalition).

### ***Shared responsibility for preventing and addressing NIMBYism***

Submissions were made that a double standard exists when it comes to discriminatory NIMBY opposition – that people who do not think of themselves as being prejudiced or discriminatory will say "we don't want 'those people' in our neighbourhood," "those people will bring our property values down," or "we don't want those people unsupervised around our children." It appears that the human rights implications of these kinds of comments when made, for example in public meetings, in letters to city councillors or on community group websites are often

not recognized or challenged, even by people who might otherwise view themselves as tolerant and respectful citizens or leaders.

Many consultees identified a need for greater public education to raise awareness of the human rights impacts of NIMBYism. To help people identify discriminatory statements, the HomeComing Community Choice Coalition has developed a “cringe test.”<sup>163</sup> This test allows individuals, including municipal councillors and members of the community, to evaluate whether the statements they are making or hearing would be inappropriate were they made in reference to other *Code* grounds such as ethnic origin.

Some consultees focussed on the need for “inclusive zoning” in which developers of private, for-profit housing would be required to build affordable housing as a benefit given back to the community. Many consultees saw a role for the Ministry of Municipal Affairs and Housing (MMAH) in taking concerted action to guide municipalities, particularly in relation to developing by-laws that would limit affordable housing options for *Code*-protected groups and individuals. FRPO suggested the development of a strong provincial policy statement and intervention at the OMB when development applications are being opposed by municipalities.

A number of consultees spoke about the role of municipal politicians and councillors in either contributing to, and supporting, NIMBY opposition or taking a strong stand against it, as a human rights issue. For example, the CMHA, Ontario noted that:

[S]ocial housing developments are plagued by poor political support and political interference fuelling discrimination even more. For example, Ward Councillors often feel duty bound to oppose projects they believe are unpopular with their constituents. As such, projects are often defeated when they apply for planning approvals and the discriminatory practice of “not-in-my-backyard” is reinforced.

The Ontario Municipal Board (OMB) was commended for consistently refusing to accept arguments based on discrimination rather than planning considerations and for not granting such appeals. While the OMB has a mechanism for dismissing frivolous or vexatious cases, it was perceived as being hesitant to use this discretion if there is the slightest chance the appeal has merit. The Commission also heard that the costs involved in defending an appeal can be substantial and can force some housing providers to abandon their projects, having already spent time, effort and money on the project to that point. For example, one OMB appeal against apartments for people with mental illnesses cost a housing provider over \$300,000 and almost \$9,000 per month for construction delays. Thus, some consultees saw a role for the OMB in ensuring that discriminatory appeals are dismissed at the earliest stage possible, and in advance of expert preparation for the hearing.

In addition, some consultees advocated for developing provincial legislation based on the American *Fair Housing Act*<sup>164</sup> as a major element of any strategy to address discrimination experienced as a result of property management practices. Good Shepherd proposed that the following elements be included in such a law:

- a requirement that municipalities have an “affordable housing statement” that includes measures to address discrimination
- rewards such as allocating additional housing to communities that are committed to affordable housing and allowing municipalities to offer other incentives
- measures to make the impact of NIMBY opposition less “painful” and costly, such as authorizing the OMB to reject appeals that are not based on substantive planning arguments.

## 6. FRAMEWORK FOR ACTION

Protecting the human rights of vulnerable Ontarians requires a radically different response to the issues of discrimination identified in this 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*.

## 6.1. 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 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.”<sup>165</sup>

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.<sup>166</sup>

### 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:
- 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.

## 6.2. 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 the application of 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.

### **6.3. 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 the creation of new and affordable housing. Neighbourhood groups, local business associations and homeowners in communities across Ontario need 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.

### **6.4. Social housing providers**

In the consultation, the Commission heard about problems arising from chronological waiting lists for social housing, and disparities in the application of 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*.

## 6.5. 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).

## **6.6. 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.

## **6.7. 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.

## **6.8. 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.



## 7. INDEX OF ACRONYMS

AODA	<i>Accessibility for Ontarians with Disabilities Act, 2005</i>
ACTO	Advocacy Centre for Tenants Ontario
AHP	Affordable Housing Program
ARCH	ARCH Disability Law Centre
CAST	Children's Aid Society of Toronto
CERA	Centre for Equality Rights in Accommodation
CESCR	Committee on Economic, Social and Cultural Rights
CHFC	Co-operative Housing Federation of Canada
CHS	Canadian Hearing Society
CMHA	Canadian Mental Health Association
EOLO	Eastern Ontario Landlord Association
FRPO	Federation of Rental-Housing Providers
<i>ICESCR</i>	<i>International Covenant on Economic, Social and Cultural Rights</i>
KCLC	Kingston Community Legal Clinic
LTB	Landlord and Tenant Board
MMAH	Ministry of Municipal Affairs and Housing
MTCSALC	Metro Toronto Chinese and Southeast Asian Legal Clinic
NIMBY	Not-In-My-Back-Yard
OASW	Ontario Association of Social Workers
ODSP	Ontario Disability Support Program
OFMHAP	Ontario Federation of Community Mental Health and Addiction Programs
OFIFC	Ontario Federation of Indian Friendship Centres
OMB	Ontario Municipal Board
ONPHA	Ontario Non-Profit Housing Association
PACE	People Advocating for Change through Empowerment (PACE) Inc.
PPAO	Psychiatric Patient Advocacy Office
RGI	Rent-geared-to-income
RTA	<i>Residential Tenancies Act</i>
SCRSP	Strong Communities Rent Supplement Program
<i>SHRA</i>	<i>Social Housing Reform Act</i>
SMHN	Service Managers Housing Network
SRAC	Social Rights Advocacy Centre

## 8. ENDNOTES

<sup>1</sup> Ontario Human Rights Commission, *Time for Action: Advancing Human Rights for Older Ontarians* (June 2001) (*Time for Action*).

<sup>2</sup> Ontario Human Rights Commission, *The Cost of Caring: Report on the Consultation on Discrimination on the Basis of Family Status* (November 2006).

<sup>3</sup> See for example Government of Canada, Policy Research Initiative, *Synthesis Report: Housing Policy and Practice in the Context of Poverty and Exclusion* (August 2005) which notes that adequate housing is essential to the reduction of poverty and social exclusion. The Quebec Court of Appeal has said that housing, even more than employment, is a basic need of every individual in our society. See *Desroches v. Quebec (Comm des droits de la personne)* (1997), 30 C.H.R.R. D/345 (Que. CA).

<sup>4</sup> For example, the Royal Commission on Aboriginal Peoples identified poverty and discrimination as the main impediments to creating adequate and affordable housing for Aboriginal people living in non-reserve communities. *Report of the Royal Commission on Aboriginal Peoples*, Volume 3, Chapter 4, Section 5, online: [www.ainc-inac.gc.ca/ch/rcap/index\\_e.html](http://www.ainc-inac.gc.ca/ch/rcap/index_e.html).

<sup>5</sup> Statistics Canada, "Immigration and Citizenship," (Release No. 4: December 4, 2007), online: <http://www.statcan.ca>.

<sup>6</sup> Statistics Canada, "Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census: Immigrants came from many countries – Linguistic diversity of the immigrant population," online: [/www12.statcan.ca/english/census06/analysis/immcit/linguistic\\_divers.cfm](http://www12.statcan.ca/english/census06/analysis/immcit/linguistic_divers.cfm).

<sup>7</sup> Statistics Canada, "Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census: Immigrants in the provinces and territories – Ontario: Province of choice for most newcomers to Canada," online: [www.statcan.ca](http://www.statcan.ca).

<sup>8</sup> Statistics Canada, "Persons in low income after tax, by prevalence in percent (2001 – 2005)," online: [www40.statcan.ca/l01/cst01/famil19a.htm](http://www40.statcan.ca/l01/cst01/famil19a.htm).

<sup>9</sup> Households described as being in "core housing need" are households that are "unable to pay the median rent for alternative local housing meeting all standards [*i.e.* housing conditions] without spending 30% or more of before-tax household income." J. Engeland *et al.*, "Evolving Housing Conditions in Canada's Census Metropolitan Areas," 1991-2001 (Ottawa: Statistics Canada, January 2005) at 35-36, online: [www.statcan.ca](http://www.statcan.ca).

<sup>10</sup> Carter and Polevychok, Canadian Policy Research Networks Inc., *Housing is Good Social Policy* (December 2004) at p. 10. This means that this percentage of people protected by *Code* grounds do not live in and could not access acceptable housing.

<sup>11</sup> Kothari, Miloon, United National Special Rapporteur on adequate housing, "Preliminary Observations at the end of his Mission to Canada 9 – 22 October 2007," A/HRC/7/16/Add.4 (*Preliminary Observations*). In May 2008, Ms. Raquel Rolnik (*Brazil*) was named as the new Special Rapporteur on adequate housing as a component of the right to an adequate standard of living.

<sup>12</sup> (1976) 993 U.N.T.S. 3, Can. T.S. 1976 No. 46.

<sup>13</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, E/C.12/CAN/CO/5/ (2006) at para. 15.

<sup>14</sup> *Ibid.* at para. 24.

<sup>15</sup> Concluding Observations of the Committee on the Rights of the Child: Canada, U.N. Doc. CRC/C/15/Add. 215 (2003).

<sup>16</sup> Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Canada, U.N. Doc. A/58/38 (Part I) (2003).

<sup>17</sup> Concluding Observations of the Human Rights Committee: Canada, U.N. Doc. CCPR/C/CAN/CO/5. (2006) at para 17.

<sup>18</sup> For example, PACE referred to cuts to the Court Challenges Program, the Law Commission of Canada, Status of Women Canada, adult literacy programs, youth employment programs, Industry Canada's Community Access Programs, and the Workplace Skills program. See also Community Social Planning Council of Toronto, *Face of the Cuts: The Impact of Federal Program*

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*Cuts on Communities in Toronto – An Early Look at Selected Areas Slated for Funding Cuts* (October 2006) at p. 11, online: [www.socialplanningtoronto.org](http://www.socialplanningtoronto.org)

<sup>19</sup> See also *British Columbia (Public Service Employee relations Comm.) v. BCGSEU*, [1999] 3 S.C.R. 3 (*Meiorin*).

<sup>20</sup> *Bekele v. Cierpich*, 2008 HRTO 7 (CanLii) (*Bekele*) at para 88.

<sup>21</sup> *Ibid.*

<sup>22</sup> Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* (October 2001), online: [www.ohrc.on.ca](http://www.ohrc.on.ca).

<sup>23</sup> This concern has previously been noted by the CESCR. See Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 13 at para. 26. See also para 59 wherein the Committee recommended that the government ensure that low-income women and women trying to leave abusive relationships can access housing options and appropriate support services in keeping with the right to an adequate standard of living.

<sup>24</sup> For example, having a safe and secure place to stay for the woman and her children, time away from an abusive partner to consider options, and emotional support or counseling from staff. See YWCA Canada, *Effective Practices in Sheltering Women: Leaving Violence in Intimate Relationships, Phase II Report* (2006) at xiii, online: [www.ywcacanada.ca](http://www.ywcacanada.ca).

<sup>25</sup> Canada Mortgage and Housing Corporation (CMHC), *Housing Discrimination Against Victims of Domestic Violence* (July 2006), online: [www.cmhc-schl.gc.ca](http://www.cmhc-schl.gc.ca).

<sup>26</sup> The rate of spousal violence reported by Aboriginal women is three times that reported by non-Aboriginal people. Statistics Canada, *Measuring Violence against Women, Statistical Trends 2006*, online: <http://www.statcan.ca/english/research/85-570-XIE/85-570-XIE2006001.pdf>.

<sup>27</sup> Ontario Human Rights Commission, *Policy and Guidelines on Discrimination Because of Family Status* (March 2007) (*Family Status Policy*) at section 10.1. See also *York Condominium Corp. No. 216 v. Dudnik (No. 2)* (1990), 12 C.H.R.R. D/325; *aff'd* (1991), 14 C.H.R.R. D/406 (Ont. Div. Ct.).

<sup>28</sup> *Ibid.*

<sup>29</sup> *Residential Tenancies Act*, 2006 S.O. 2006, c. 17 (*RTA*), section 113 which states only that “subject to section 111 [which deals with rent discounts], the lawful rent for the first rental period for a new tenant under a new tenancy agreement is the rent first charged to the tenant.”

<sup>30</sup> John Howard Society of Toronto Submission. See Correctional Service of Canada, “Basic Facts About Federal Corrections, 2001 Edition”, online: <http://dsp-psd.pwgsc.gc.ca/Collection/JS82-17-2001E.pdf>. In 2001, Canada had 30,750,087 inhabitants of which 15,517,178 were women. In that same year, 2,600,994 men and 681,199 women had criminal records. These numbers include young offenders convicted of criminal offences.

<sup>31</sup> Correctional Services Canada, “Fact Sheet: Aboriginal Community Development in Corrections – Aboriginal Offender Statistics,” online: [www.csc-scc.gc.ca/text/prgrm/abinit/know/4-eng.shtml](http://www.csc-scc.gc.ca/text/prgrm/abinit/know/4-eng.shtml).

<sup>32</sup> For example, PACE pointed out that “a welfare recipient who does not report baby-sitting income needed to buy food and other necessities is harshly condemned as a criminal by the same people who routinely arrange for cash-only work to avoid taxes or who routinely charge social expenditures as business expenses.” PACE referred to the Affidavit of J. Bruce Porter, October 2000 – Ontario Court of Justice (Toronto region) Between Her Majesty the Queen, Respondent and David Bank *et al*, Applicants.

<sup>33</sup> *Mental Health Act*, R.S.O. 1990, c. M. 7. See also Ontario Human Rights Commission, *Draft Policy on Mental Health Discrimination and Police Record Checks* (February 2008) (*Record Checks Draft Policy*). A crime-free addendum is a civil contract between a landlord and a tenant whereby a prospective tenant agrees not to participate in or allow criminal activity to take place in the rental unit.

<sup>34</sup> Section 4(1) of the *Code* provides that 16- or 17-year-olds who have withdrawn from parental control have the right to equal treatment with respect to occupancy of, and contracting for, accommodation. Such contracts are enforceable as if the person were 18 years old (section 4(2)).

<sup>35</sup> This section permits preferential treatment for persons aged 65 and over and therefore permits housing that is limited to age 65 and over.

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<sup>36</sup> See also *Time for Action*, *supra* note 1.

<sup>37</sup> *Convention on the Rights of Persons with Disabilities*, Adopted by UN GA 13 December 2006: UN GAOR Plen., 61<sup>st</sup> Sess., 76<sup>th</sup> Mtg., UN Doc. GA/10554 (2006) at articles 9, 19 and 28. Note that Canada has not yet ratified this convention.

<sup>38</sup> Positive Spaces, Healthy Places, "Fact Sheet: Stigma and Discrimination in Housing" (December 2006), online: [www.healthyhousing.ca](http://www.healthyhousing.ca).

<sup>39</sup> The Canadian Psychiatric Association defines mental illness as "significant clinical patterns of behaviour or emotions associated with some level of distress, suffering (pain, death), or impairment in one or more areas of functioning (school, work, social and family interactions). At the root of this impairment are symptoms of biological, psychological or behavioural dysfunction, or a combination of these." See Canadian Psychiatric Association, *Mental Illness and Work* (brochure), online: <http://publications.cpa-apc.org/>.

<sup>40</sup> Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate* (November 2000) (*Disability Policy*).

<sup>41</sup> Section 27(1)(4) of the *RTA*, *supra* note 29 provides that a landlord may enter a rental unit on 24 hours written notice to determine if the rental unit is in a good state of repair, fit for habitation and complies with health, safety, housing and maintenance standards.

<sup>42</sup> *Bekele*, *supra* note 20.

<sup>43</sup> Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination* (June 2005) (*Race Policy*). Discrimination may be identified where a racialized person is treated differently than if he or she were White, in the absence of an acceptable non-discriminatory explanation for the difference in treatment.

<sup>44</sup> This is a kind of experiment to test for the existence of racism or other forms of discrimination. The purpose is to compare the experiences of a *Code*-protected person and one not similarly identified in performing the same task. For example, they may both apply to rent a number of units. If there are significant differences in the number of times they are told the unit is rented, this may be indicative of discrimination.

<sup>45</sup> *Ahmed v. 177061 Canada Ltd.* (2002), 43 C.H.R.R. D/379 (Ont. Bd. Inq.).

<sup>46</sup> *Iness v. Caroline Co-operative Homes Inc.* (No.5), 2006 HRTO 19 (Can LII) (*Iness*). Ms. Iness was expected to pay the full shelter component of her social assistance as rent to her co-operative, instead of paying 25% of her income as rent, which she had done previously. As a result, she was no longer able to pay her insurance and hydro costs out of the shelter portion of her benefit, resulting in her having to cover these out of her basic living costs. The Tribunal found that Ms. Iness was treated differently from other low-income tenants, who were not on social assistance and were expected to pay a percentage of their income in rent.

<sup>47</sup> Canada Mortgage and Housing Corporation, "Research Highlight – Housing Discrimination Against Victims of Domestic Violence" (2006), online: [www.cmhc-schl.gc.ca/odpub/pdf/65096.pdf](http://www.cmhc-schl.gc.ca/odpub/pdf/65096.pdf).

<sup>48</sup> See for example the *Universal Declaration of Human Rights*, signed Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) and the *International Covenant on Economic, Social and Cultural Rights*, *supra* note 13, online: [www.ohchr.org](http://www.ohchr.org).

<sup>49</sup> For example, the CERA submission pointed out that the 2006 Annual Report of Cap Reit, a residential apartment investment trust which operates over 18,000 units in Ontario, shows that the combination of vacancies, tenant inducements and bad debt amounted to 3.5% of operating revenues in 2006. Cap Reit, *Annual Report* (2006) at p. 19, online: <http://library.corporate-ir.net/library/12/124/124438/items/243891/AR2006.pdf>. The CERA submission also referred to research conducted for the Board of Inquiry hearing in *Shelter Corp v. Ontario (Human Rights Comm) (No. 2) (sub nom Kearney v. Bramalea Ltd. (No. 2))* (1998), 34 C.H.R.R. D/1 (Ont. Bd. Inq.) (*Kearney*) - N. Barry Lyon Consultants Ltd., *The Impact of Rent Arrears on the Viability of Residential Landlords' Businesses* (1995).

<sup>50</sup> For example, the Metro Tenants' Association Submission referred to statistics from Lapointe, Linda, *Analysis of Evictions in the City of Toronto: Overall Rental Housing Market*, (March 2004) in support of the following reasons for rent arrears: Job-related reasons (39%), Medical reasons (17%), Other financial reasons (12%), Family Issues (7%), Landlord/tenant conflict (13%), Other reasons (12%).

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<sup>51</sup> Ontario Human Rights Commission, *Human Rights and Rental Housing in Ontario: Background Paper* (March 2007) at 49.

<sup>52</sup> *Family Status Policy*, *supra* note 27 at section 10.2.1.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Kearney*, *supra* note 49 and *Vander Schaaf v. M & R Property Management Ltd.* (2000), 38 C.H.R.R. D/251, at para. 105 (Ont. Bd. Inq.).

<sup>55</sup> Service Canada, [www1.servicecanada.gc.ca/en/sin/protect/provide.shtml](http://www1.servicecanada.gc.ca/en/sin/protect/provide.shtml)

<sup>56</sup> See also *Record Checks Draft Policy*, *supra* note 33.

<sup>57</sup> *RTA*, *supra* note 29, section 106.

<sup>58</sup> *Background Paper*, *supra* note 51 at 49.

<sup>59</sup> This kind of requirement can impact negatively on people who work part-time or contractually including people with caregiving obligations, Aboriginal people and young people. See for example, *Sinclair v. Morris A. Hunter Investments Ltd.* (2001), 41 C.H.R.R. D/98 (Ont. Bd. Inq.) in which a landlord's requirement that applicants be employed on a permanent basis for a minimum length of time with one employer discriminated against young people.

<sup>60</sup> *Cunanan v. Boolean Developments Ltd.* (2003), 47 C.H.R.R. D/236, at paras. 65-66 (H.R.T.O.)

<sup>61</sup> *Family Status Policy*, *supra* note 27 at section 10.3.

<sup>62</sup> *Social Housing Reform Act 2000*, O. Reg. 298/01 "Rent-gear-to-income Assistance and Special Needs Housing," section 28(2)(a).

<sup>63</sup> Canada Mortgage and Housing Corporation, "Housing in Canada Online", online: [http://data.beyond2020.com/cmhc/HiCODefinitions\\_EN.html#\\_Housing\\_Standards](http://data.beyond2020.com/cmhc/HiCODefinitions_EN.html#_Housing_Standards). See also Industry Canada, Audit and Evaluation Services, *Co-operative Housing Programs Evaluation* (2003), online: <http://dsp-psd.pwgsc.gc.ca/Collection/NH15-418-2003E.pdf>.

<sup>64</sup> *Meiorin*, *supra* note 19.

<sup>65</sup> *Iness*, *supra* note 46 at paras. 302 to 335.

<sup>66</sup> *Disability Policy*, *supra* note 40.

<sup>67</sup> Group homes and retirement homes were not a focus of this consultation and these issues reflect only a small part of the issues that may exist.

<sup>68</sup> *Smoke-Free Ontario Act*, S.O. 1994, c. 10.

<sup>69</sup> Vancouver Sun, *Woman claims right to smoke-free housing* (February 5, 2008).

<sup>70</sup> See for example, Shelley, Jacob, University of Alberta, *Environmental Tobacco Smoke as a Breach of the Covenant of Quiet Enjoyment* (August 2007).

<sup>71</sup> K. Klasser, MD *et al.*, "Smoking and Mental Illness: A Population-Based Prevalence Study" (2000) 284 No. 20 *The Journal of the American Medical Association* 2608 (Reprinted).

<sup>72</sup> Ontario Human Rights Commission, *Policy on Drug and Alcohol Testing* (September 2000).

<sup>73</sup> For example, *Cominco Ltd. v. United Steelworkers of America, Local 9705*, [2000] B.C.C.A.A. No. 62 Award no. A-046/00, and *McNeill v. Ontario (Ministry of the Solicitor General and Correctional Services)*, [1998] O.J. No. 2288.

<sup>74</sup> *Disability Policy*, *supra* note 40 at section 5.3.3.

<sup>75</sup> See for example, *Walmer Developments v. Wolch* (2003), 67 O.R. (3d) 246, online: [www.canlii.org/en/on/onscdc/doc/2003/2003canlii42163/2003canlii42163.html](http://www.canlii.org/en/on/onscdc/doc/2003/2003canlii42163/2003canlii42163.html).

<sup>76</sup> The term "care home" is used to refer to retirement homes, rest homes, group homes and boarding houses where care services are offered or provided.

<sup>77</sup> *SHRA*, O. Reg. 298/01, *supra* note 62.

<sup>78</sup> The Commission also heard that some co-ops have created their own by-laws allowing members to be evicted, sometimes on short notice, if they are assessed as being incapable of living independently.

<sup>79</sup> For example, owners of rental units located in houses, duplexes, triplexes, converted houses, apartments over stores and second suites in owner occupied houses. The Landlord's Self Help Centre estimates that this type of accommodation represents 20% of rental housing stock.

<sup>80</sup> See United Nations Committee on Economic, Social and Cultural Rights, *Nineteenth Session General Comment No. 9 The Domestic Application of the Covenant*, Committee on Economic, Social and Cultural Rights, Geneva, E/C. 12/1998/24 at para. 15. See also *Slaight Communications Inc. v. Davidson*, [1989] 1 SCR 1038; and *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

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- <sup>81</sup> *Tranchemontagne v. Ontario (Dir., Disability Support Program)* [2006] 1 S.C.R. 513.
- <sup>82</sup> Ontario Human Rights Commission, *Guidelines on Developing Human Rights Policies and Procedures* (previously called *Developing Internal Policies and Procedures to Resolve Human Rights Complaints*) (March 2008), online: [www.ohrc.on.ca](http://www.ohrc.on.ca).
- <sup>83</sup> *Background Paper*, *supra*, note 51 at 14.
- <sup>84</sup> David Hulchanski, *Discrimination: Routine Exclusion of Welfare Recipients in Toronto* (1992) (*Hulchanski*), online: [http://action.web.ca/home/housing/resources.shtml?x=67199&AA\\_EX\\_Session=3ace2d7f6374b4a8c3d8138dbdad41d9](http://action.web.ca/home/housing/resources.shtml?x=67199&AA_EX_Session=3ace2d7f6374b4a8c3d8138dbdad41d9).
- <sup>85</sup> See for example, the discussion in the Commission's *Race Policy*, *supra* note 43 at section 1.4 "Historical Context: The Legacy of Racism on Canada."
- <sup>86</sup> See for example National Institutions for the Promotion and Protection of Human Rights, GA Res. 48. 134, UN GAOR, 48<sup>th</sup> Sess., 8<sup>th</sup> Plenary Mtg, UN Doc. A/RES/48/134 920 December 1993); National Institutions for the Promotion and Protection of Human Rights, Res. 1994/54, UN HRC, 56<sup>th</sup> Meeting, UN Doc. R/CN.4/RES/1994/54 (4 March 1994). See also United Nations Committee on Economic, Social and Cultural Rights, *Nineteenth Session General Comment No. 10 The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights*, Geneva, E/C. 12/1998/25 at para. 15.
- <sup>87</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 13 at para. 39.
- <sup>88</sup> *Kearney*, *supra* note 49.
- <sup>89</sup> The John Howard Society of Toronto indicated that pardons can only be granted after a sentence has been fully served and a waiting period of 3 – 5 years has been completed. It may take 12 – 18 months or longer to obtain a pardon once an application is submitted. Applicants are responsible for paying any costs associated with obtaining a full set of fingerprints (\$25 in Toronto), obtaining a certified copy of their criminal record from the RCMP (\$25) and paying a \$50 fee to the National Parole Board to process their application. Once the application is submitted, it is up to the National Parole Board to decide whether or not to accept the application and grant the pardon. Success rates over the past seven years have varied from 26% of all applications made in a year to 116%. See also National Parole Board, Performance Measurement Division "Performance Monitoring Report 2006-2007" (July 2007), online: [www.npb-cnrc.gc.ca/reports/pdf/pmr\\_2006\\_2007/PMR\\_2006-2007-eng.pdf](http://www.npb-cnrc.gc.ca/reports/pdf/pmr_2006_2007/PMR_2006-2007-eng.pdf)
- <sup>90</sup> See also *Crozier v. Asseltine* (1994), 22 C.H.R.R. D/244 at para. 9 (Ont. Bd. Inq.) and *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252.
- <sup>91</sup> *Background Paper*, *supra* note 51 at 22.
- <sup>92</sup> Ontario Human Rights Commission, *Submission Concerning Barrier-Free Access Requirements in the Ontario Building Code* (March 2002), online: [www.ohrc.on.ca/en/resources/submissions/SubmBldngCode2/pdf](http://www.ohrc.on.ca/en/resources/submissions/SubmBldngCode2/pdf).
- <sup>93</sup> In *Quesnel v. London Educational Health Centre* (1995), 28 C.H.R.R. D/474 an Ontario Board of Inquiry stated: "With respect to the personal respondent's contention that he complied with local building codes, it is sufficient to note that s. 47(2) establishes the supremacy of the *Code* over any other Act or Regulation which would allow for a contravention of Part I rights. Compliance with building codes does not, in itself, justify a breach of human rights legislation."
- <sup>94</sup> See also Ontario Human Rights Commission, "Proposed Transit Accessibility Standard a setback for Ontarians with Disabilities" (August 30, 2007) and *Submission of the Ontario Human Rights Commission to the Transportation Standards Review Committee regarding the Initial Proposed Transit Accessibility Standard* (August 2007), online: [www.ohrc.on.ca](http://www.ohrc.on.ca).
- <sup>95</sup> *Accessibility for Ontarians with Disabilities Act, 2005*, 2005, S.O. 2005, c. 11.
- <sup>96</sup> See for example, *Eldridge v. British Columbia (Attorney General)*, 1997 3 S.C.R. 624.
- <sup>97</sup> Kothari, Miloon, "Statement 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", Report presented at the 7<sup>th</sup> session of the Human Rights Council (12 March 2008) at p. 2.

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<sup>98</sup> Smith, Joanna, “UN special envoy to shine spotlight on housing in Toronto,” *The Toronto Star* (18 October 2007).

<sup>99</sup> Kothari, Miloon, Preliminary Observations, *supra* note 11 at p. 4.

<sup>100</sup> Kothari, *supra* note 97.

<sup>101</sup> The bill, as currently worded, states that the Government of Ontario undertakes, as far as it considers reasonable and appropriate to do so, to ensure that adequate housing is accessible to those entitled to it; to provide protection from violations of the right to adequate housing, including forced evictions; to provide housing subsidies for those unable to obtain affordable adequate housing; and to take such other measures as it sees fit to recognize, promote and protect the right to adequate housing.

<sup>102</sup> Ministry of Municipal Affairs and Housing (MMAH), *Provincial Policy Statement* (2005). MMAH noted that the policy statement was improved in 2005 as a result of planning reforms and permits and facilitates “all forms of residential intensification and redevelopment, and all forms of housing required to meet the social, health and well-being requirements of current and future residents, including special needs requirements.” Special needs include “housing used by people who have specific needs beyond economic needs, e.g. housing for persons with disabilities, such as physical, sensory or mental health; housing for the elderly.”

<sup>103</sup> Volk, Nick “Canadian Government’s response to Miloon Kothari – Special Rapporteur on Adequate Housing presentation in Canada” (March 16, 2008), online: [www.hic-net.org](http://www.hic-net.org).

<sup>104</sup> Kothari, *supra* note 97 at p. 2.

<sup>105</sup> As of April 25, 2008, progress had been made on 704 affordable housing projects representing a total of 11,191 affordable units. Of 9,327 rental and supportive units, there are 3,752 occupied units, 2,324 units under construction and 3,251 units in planning approvals. Of 998 units for homeownership, 781 units are occupied, 53 units are under construction and 164 units are in planning approvals. Of 866 units in the Northern Housing Component, 501 units are occupied, 33 units are under construction/repair and 332 units are in the client selection stage. Government of Ontario, “Affordable Housing,” online: [www.mah.gov.on.ca/page126.aspx](http://www.mah.gov.on.ca/page126.aspx).

<sup>106</sup> MMAH indicated that the SCRSP is an important component of the overall provincial housing strategy and that it provides RGI assistance, via service managers, to households in need for both supportive and non-supportive housing units. According to MMAH, the most recent survey of service managers conducted in the fall of 2006 indicated that 6,610 households were assisted under the SCRSP, of which 1,322 were in supportive housing and 5,288 were not. It was also noted that accountability for the SCRSP is shared between the province and municipal service managers, with the province maintaining guidelines for program administration, providing funding and program support to supportive agencies, and municipal service managers delivering the program in accordance with the MOU and program guidelines. Participating landlords enter into rent supplement agreements with municipal service managers to provide rental units to eligible households.

<sup>107</sup> MMAH indicated that funding for this program is \$18.8 million and that service managers are required by provincial rules to evaluate tenant applications on an individual basis by considering their needs and “potential for long term housing.” At the time of MMAH’s submission, this program was being evaluated to determine how the program should be changed in the future. Since then, the Government of Ontario has announced a \$5 million investment in rent banks to help more families stay in their homes. Renters can apply for financial assistance from a rent bank no more than once in two years, and get up to two months help with rent. If a tenant’s application is approved, the outstanding rent is paid directly to the landlord on behalf of the tenant. See Government of Ontario, “Families in Need Get Help with Rent: McGuinty Government Announces Funding for Rent Banks” (May 15, 2008).

<sup>108</sup> For example, the SMHN referred to federal co-operatives, supportive housing administered by the Ministry of Health and Long-Term Care and the Ministry of Community and Social Services, housing allowance programs, rent supplement programs, and new affordable housing programs.

<sup>109</sup> See also *Dartmouth/Halifax County Regional Housing Authority v. Sparks*, (1993) 101 D.L.R. (4<sup>th</sup>) 224 (N.S.C.A.) at 234: “As a general proposition, persons who qualify for public housing are the economically disadvantaged and are so disadvantaged because of their age and correspondingly low incomes (seniors) or families with low incomes, a majority of whom are

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disadvantaged because they are single female parents on social assistance, many of whom are [B]lack. The public housing tenants group as a whole is historically disadvantaged as a result of the combined effect of several personal characteristics listed in s. 15(1)."

<sup>110</sup> In 2006 the government was recommended to make sure that sufficient and adequate community based housing is provided to people with mental disabilities so they are not detained when there is no medical reason for such detention. Concluding Observations of the Human Rights Committee, *supra* note 17.

<sup>111</sup> Stapleton, John, Metcalf Foundation, *Why is it so tough to get ahead: How our tangled social programs pathologize the transition to self-reliance* (2007) at 29.

<sup>112</sup> *Ibid.* at 19.

<sup>113</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 13 at para. 28.

<sup>114</sup> Ontario Non-Profit Housing Corporation, *Report on the Waiting List Statistics for Ontario* (August 2007), online: [www.onpha.on.ca/english/doc/wait\\_list.pdf](http://www.onpha.on.ca/english/doc/wait_list.pdf).

<sup>115</sup> *Co-operative Corporations Act*, R.S.O. 1990, c. C. 35.

<sup>116</sup> *RTA*, *supra* note 29, section 113.

<sup>117</sup> EOLO and FRPO referred the Commission to extensive research, including by Nobel Laureates, on the topic of rent controls.

<sup>118</sup> See for example Golden, Anne, *The Report of the Mayor's Homelessness Action Task Force: Taking Responsibility for Homelessness* (1999) (*Golden Report*) at 262.

<sup>119</sup> *Ibid.* at 265. See also ACTO, "Quick Facts: Rental Housing in Ontario," which indicates that "[t]he secondary or non-conventional rental market has been variously estimated to be 589,861 units or 41.3% of the total rental universe and as 894,000 units or 50% of all renter households." Online: [www.acto.ca/english/acto\\_content.php?topic=7&sub=184](http://www.acto.ca/english/acto_content.php?topic=7&sub=184).

<sup>120</sup> Bill 120, the *Residents Rights Act*, passed in 1994, overrode municipal zoning bylaws and permitted second units in houses, including basement units, as long as health and fire safety standards were met. It provided for a simplified process for enforcement of municipal zoning and property standards. This legislation was accompanied by O. Reg. 285/94 which set out the required safety standards for such units. Bill 20, the *Land Use Planning and Protection Act*, was introduced in 1995. It repealed most of the second unit provisions in the *Residents Rights Act* and re-affirmed municipalities' ability to decide whether to prohibit basement apartments. This Act has been replaced by the *Planning Act*, R.S.O. 1990, c.P. 13 which does not address this issue other than to indicate that there is no appeal to the Ontario Municipal Board regarding second unit policies or by-laws regarding two residential units in a detached house, semi-detached house or row-house (subsection 19(1)). See also O. Reg 384/94 "Apartments in Houses."

<sup>121</sup> See also Urban Development Institute/Ontario, "Beaubien Report Released: Further Changes to Property Assessment System Recommended" (December 2, 2002), online: [www.udiontario.com/issupd/upd021202.htm](http://www.udiontario.com/issupd/upd021202.htm).

<sup>122</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 13 at para 24.

<sup>123</sup> *Ibid.* at para 56.

<sup>124</sup> *Child and Family Services Act (CFSA)*, R.S.O. 1990, c. C. 11.

<sup>125</sup> Miriam Cohen-Schlanger, *et al.*, "Housing as a factor in admissions of children to temporary care: A survey," *Child Welfare* (May 1995); and Shirley Chau, *et al.*, *One in Five ... Housing as a Factor in the Admission of Children to Care: New Survey of Children's Aid Society of Toronto Updates 1992 Study*, CUCS Research Bulletin #5, University of Toronto (November 2001).

<sup>126</sup> *Kearney supra* note 49.

<sup>127</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 13 at para. 15.

<sup>128</sup> Hulchanski, *supra* note 84.

<sup>129</sup> See also the Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 13 at para. 29: "The Committee notes with particular concern that many evictions occur on account of minimal arrears of rent, without due consideration of the State party's obligations under the Covenant."



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<sup>130</sup> Hon. Onley, David, *Moving Forward the Ontario Way* (November 29, 2007), online: [www.premier.gov.on.ca/news/Product.asp?ProductID=1799](http://www.premier.gov.on.ca/news/Product.asp?ProductID=1799). Elements of the announced strategy include boosting the minimum wage to \$10.25 by 2010, increasing child care spaces, providing more affordable housing and fully implementing the new Ontario Child Benefit, raising it to \$1,100 per child.

<sup>131</sup> Affordable housing is a critical component of poverty reduction strategies. The Government of Ontario's website indicates that its long-term strategy for affordable housing will be closely aligned with the poverty reduction plan. It now provides 35,000 new housing allowances and funds more than 18,000 units of affordable housing, online:

[www.growingstronger.ca/en/facts\\_what\\_housing.html](http://www.growingstronger.ca/en/facts_what_housing.html). See also Campaign 2000: End Child and Family Poverty in Canada, *2007 Report Card on Child and Family Poverty in Canada – It takes a Nation to Raise a Generation: Time for a National Poverty Reduction Strategy* (Campaign 2000), online: [www.campaign2000.ca/rc/rc07/2007\\_C2000\\_NationalReportCard.pdf](http://www.campaign2000.ca/rc/rc07/2007_C2000_NationalReportCard.pdf).

<sup>132</sup> There were 1.8 million Ontarians below Statistic's Canada's Low Income Cut-off in 2005. Of these, 26% were under 18 (474,000 children), about 9% were adults over age 65 (169,000 seniors), and about 64% were adults between 18 and 64 (1.15 million). Information taken from Shapcott, Michael "Ontario Throne Speech and housing" (November 30, 2007) online: [wellesleyinstitute.com/ontario-throne-speech-and-housing](http://wellesleyinstitute.com/ontario-throne-speech-and-housing).

<sup>133</sup> The CESCR also recommended that the State Party assess the extent to which poverty is a discrimination issue in Canada, and ensure that measures and programmes do not have a negative impact on the enjoyment of economic, social and cultural rights, especially for disadvantaged and marginalized individuals and groups. It would be encouraging to see these kinds of goals built into provincial initiatives aimed at eliminating poverty. Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 13 at para. 44. See also Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, U.N. Doc. E/C. 12/1/Add.31 (1998).

<sup>134</sup> The Government of Ontario, *Growing Stronger*, online: [www.ontario.ca/growingstronger](http://www.ontario.ca/growingstronger). This brochure notes that between 2004 and 2006 the Government of Ontario increased social assistance rates by 7% and that the 2008 Budget introduced a further 2% rate increase. The brochure also notes that increases of \$0.75/year will bring the current minimum wage of \$8.75/hour to \$10.25 by 2010.

<sup>135</sup> 76% of ODSP beneficiaries are tenants but only 22% live in subsidized housing. 96% of Ontario Works beneficiaries rent housing but only 17% live in subsidized housing. ACTO Quick Facts, *supra* note 119. See also Statistics and Analysis Unit, Social Assistance and Employment Opportunities Division, Ministry of Community and Social Services, "June 2005 quarterly report of OW/ODSP cases and beneficiaries by accommodation types."

<sup>136</sup> ODSP Action, "Coalition Social Assistance Rates Backgrounder", online: [www.incomeseurity.org/documents/Sabackgrounder.pdf](http://www.incomeseurity.org/documents/Sabackgrounder.pdf).

<sup>137</sup> See for example, Office of Child and Family Service Advocacy, *We are your Sons and Daughters* (June 2007), online: [www.oacas.org/pubs/external/childadvocatereview07june21.pdf](http://www.oacas.org/pubs/external/childadvocatereview07june21.pdf).

<sup>138</sup> Stapleton, John, *supra*, note 111 at 13.

<sup>139</sup> *Ibid.*

<sup>140</sup> See also Ontario Coalition for Social Justice, "Ontario Campaign for Social Justice" (August 2007), online: [www.ocsj.ca/network.php](http://www.ocsj.ca/network.php). See also Campaign 2000, *supra* note 131 – the report notes that "in 2005, 41% of all low income children lived in a family in which one parent was working full time all year, but the family still lived in poverty" at 3.

<sup>141</sup> Government of Ontario, "Ontario's Minimum Wage Increases 2007 – 2010," online: [www.labour.gov.on.ca/info/minimumwage/](http://www.labour.gov.on.ca/info/minimumwage/).

<sup>142</sup> While full-time work at a minimum wage of \$10 in 2005 would have been enough to secure an income above the 2005 before-tax Low Income Cut-Off of \$20,778, assuming an inflation rate of 2.1% between 2005 and 2010, this would be equivalent to \$11.10 in 2010. Murray, Stuart and Mackenzie, Hugh, Canadian Centre for Policy Alternatives, *Bringing Minimum Wages Above the Poverty Line* (March 2007), online: [www.growinggap.ca/files/Minimum%20Wages%20SUMMARY.pdf](http://www.growinggap.ca/files/Minimum%20Wages%20SUMMARY.pdf).

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<sup>143</sup> Income Security Advocacy Centre, “Ontario Needs a Raise Campaign – Minimum Wage Fact Sheet” (February 2005), online: <http://www.incomesecurity.org>.

<sup>144</sup> *Ibid.*

<sup>145</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 13 at paras 11(c), (f), 18, 20, 23 and 28.

<sup>146</sup> A housing allowance is “a government subsidy that reduces the housing costs incurred by a family or individual.” Canada Mortgage and Housing Corporation, *Housing Allowance Options for Canada* (2006), online: [www.cmhc-schl.gc.ca](http://www.cmhc-schl.gc.ca) at p. 1. This study explores four design options for housing allowance programs.

<sup>147</sup> See for example the *Golden Report*, *supra* note 118 which describes the need for specific strategies to address the needs of high-risk sub-groups such as families with children, youth, abused women, Aboriginal people, immigrants and refugees. *Background Paper*, *supra* note 51 at 50 & 53. See also Community Social Planning Council of Toronto, *Homelessness in Toronto: A Review of the Literature from a Toronto Perspective* (2004) at 1, online: [intraspec.ca/HOMELESSNESS\\_in\\_Toronto.pdf](http://intraspec.ca/HOMELESSNESS_in_Toronto.pdf).

<sup>148</sup> “Individuals of Aboriginal origin account for 35% of the homeless population in Edmonton, 18% in Calgary, 11% in Vancouver and 5% in Toronto, but only 3.8%, 1.9%, 1.7% and 0.4% of the general population of these cities respectively: Stephen Hwang, “Homelessness and Health” (2001) 164(2) CMAJ (online: e:CMAJ <http://www.cmaj.ca/cgi/content/full/164/2/229>”).

<sup>149</sup> CAMH referred to Yanos P., Barrow, S. & Tsemberis, S. (2004). “Community integration in the early phase of housing among homeless persons diagnosed with severe mental illness: successes and challenges.” *Community Mental Health Journal*, 40(2): 133 – 150. See also the *Golden Report*, *supra* note 118.

<sup>150</sup> The Alliance to End Homelessness said that in 2006, the number of single women using shelters increased by 14.5%, the number of youth using shelters increased by 11.8% and the number of children using shelters increased by 12.4 %, even though the number of families decreased by 7.9%.

<sup>151</sup> The John Howard Society of Toronto submitted that of the 5,052 people counted in Toronto’s Street Needs Assessment survey, 18% had had an “interaction with corrections” and 17% had “had an interaction with probation or parole” in the previous six months. It was also noted that in Sudbury, 9.4% of the 148 people counted as homeless in January 2004 gave “release from jail” as the reason for their homelessness.

<sup>152</sup> See also *Golden Report*, *supra* note 118.

<sup>153</sup> See for example Concluding Observations of the Committee on the Rights of the Child: Canada, *supra* note 15 and Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Canada, *supra* note 16.

<sup>154</sup> Homeless women between 15-44 were 10 times more likely to die than women in the general population of Toronto. Angela M. Cheung & Stephen W. Hwang, “Risk of death among homeless women: a cohort study and review of literature” (2004) 170(8) CMAJ 1243 at 1245.

<sup>155</sup> Canadian Mental Health Association, Ontario, “Homelessness and the Seriously Mentally Ill” (January 31, 2003). See also the *Golden Report*, *supra* note 118 at 119.

<sup>156</sup> *Ibid.* at 112.

<sup>157</sup> Previous reports have noted that decreases in the numbers of rooming houses have been associated with increasing homelessness and have recommended permitting rooming houses as-of-right as part of a homelessness strategy. See for example the *Golden Report*, *supra* note 118 at 179.

<sup>158</sup> See for example, Social Housing Strategies Inc. for the City of Toronto, *Rooming House Issues and Future Options, Background Report 2: Regulation and Licensing of Rooming Houses in the City of Toronto and Other Jurisdictions* (April 2004), online: [www.toronto.ca/housing/pdf/rooming-house-bg-2.pdf](http://www.toronto.ca/housing/pdf/rooming-house-bg-2.pdf) and Social Housing Strategies Inc. for the City of Toronto, *Rooming House Issues and Future Options, Final Report* (April 2004), online: [www.urbancentre.utoronto.ca/pdfs/curp/2004\\_Toronto-Rooming-House-Report.pdf](http://www.urbancentre.utoronto.ca/pdfs/curp/2004_Toronto-Rooming-House-Report.pdf).

<sup>159</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 13 at para. 28.

<sup>160</sup> *Ibid* at para. 57.

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<sup>161</sup> Chief Commissioner Barbara Hall, “Re: Residents angry over housing project,” (November 14, 2007), online: [www.ohrc.on.ca](http://www.ohrc.on.ca).

<sup>162</sup> *Ibid.*

<sup>163</sup> HomeComing Community Choice Coalition’s cringe test can be accessed online at [www.homecoming.lonecat.com/pdfs/IScringetest.pdf](http://www.homecoming.lonecat.com/pdfs/IScringetest.pdf).

<sup>164</sup> *Fair Housing Act*, 42 U.S.C. 3601 et seq.

<sup>165</sup> Kothari, Miloon, *supra*, note 97 at 6.

<sup>166</sup> *Ibid.* at 2.