SUBMISSION TO:
UN SPECIAL RAPPORTEUR
ON ADEQUATE HOUSING

FOR:
REPORT TO THE UN GENERAL ASSEMBLY
AND HUMAN RIGHTS COUNCIL

HOUSING DISCRIMINATION & SPATIAL SEGREGATION IN CANADA

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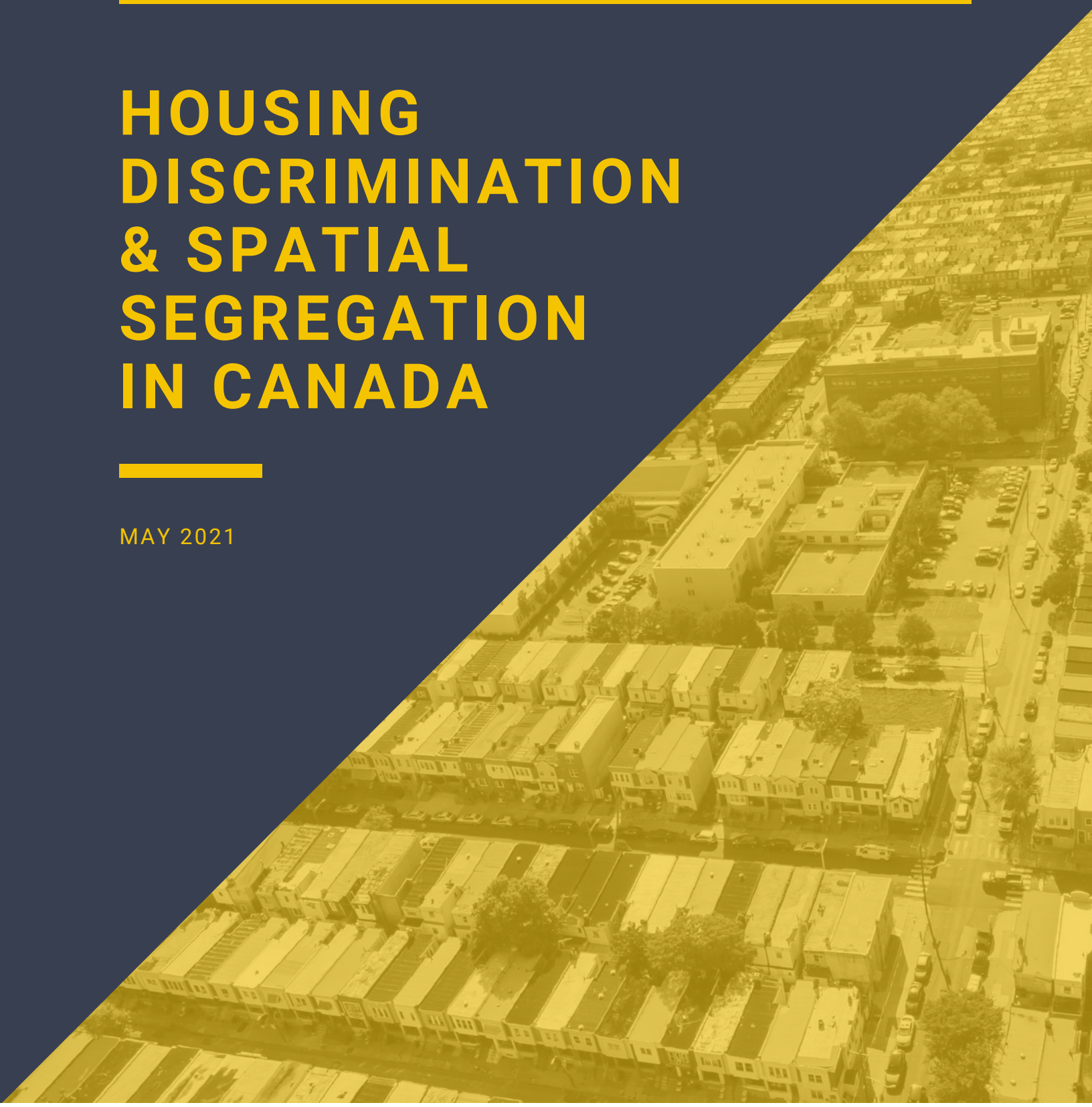

Centre for Equality Rights in Accommodation
Centre pour les droits à l'égalité au logement

THE NATIONAL RIGHT TO HOUSING NETWORK

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CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION

The Centre for Equality Rights in Accommodation (CERA) is a not-for-profit charity that has worked to advance the right to housing for over 30 years through policy and legal advocacy, community education programs, legal initiatives, and direct human rights-based supports for marginalized tenants. We do this by providing services to individuals who are facing eviction, discrimination or a human rights violation in their housing, by delivering public education and capacity-building on housing rights and the right to housing, and by working to advance rights-based housing policy to address the issues facing individuals at a more systemic level.

NATIONAL RIGHT TO HOUSING NETWORK

The National Right to Housing Network (NRHN) is a group of key leaders, experts and people with lived experience of housing precarity and homelessness, with a mission to fully realize the right to housing for all in Canada. The NRHN is made up of a Steering Committee and membership of over 350 organizations and individual advocates committed to the meaningful implementation of the right to housing following Canada's legislated commitments in the National Housing Strategy Act.

SOCIAL RIGHTS ADVOCACY CENTRE

The Social Rights Advocacy Centre (SRAC) is a non-profit NGO that works in Canada and internationally to promote access to justice and accountability for economic, social and cultural rights. SRAC is a member of the Steering Committee of the Strategic Litigation Working group of ESCR-Net and a member of the Steering Committee of the National Right to Housing Network. SRAC co-ordinates the work of the Charter Committee on Poverty Issues and was a lead organization in an 11- year community-university research alliance project on social rights in Canada funded by the Social Science and Humanities Research Council.

1. Violations of the right to housing in Canada are invariably linked to violations of the right to equality and non-discrimination

In an affluent country like Canada, with ample resources to ensure access to housing for all, widespread homelessness and violations of the right to housing that have been the subject of alarm and concern from UN treaty bodies and mandate holders are invariably also violations of the right to non-discrimination and equality. Homelessness and inadequate housing are directly linked to embedded patterns of discrimination, colonization, racism and marginalization. These include:

- Discriminatory budgeting and resource allocation that fails to respond adequately to the housing needs of marginalized and vulnerable groups, systematically underfunding social housing needed by protected groups and failing to provide income supports necessary for protected groups to have access to decent affordable housing in the private market and avoid segregation into under-served and marginalized buildings and communities.

- An ongoing failure to address homelessness as a violation of the right to equality of groups that are disproportionately affected, including persons with disabilities, persons on social assistance, (im)migrants, LGBTQ+, youth, Indigenous people, racialized people, women and families with children.

- Discriminatory zoning, planning and development that facilitates the destruction of affordable housing and the forced evictions of communities in which migrants, including recent (im)migrants, racialized groups, religious minorities, urban Indigenous people and other protected groups have settled, to provide housing for affluent, predominantly white households in order to profit from discriminatory attitudes about “desirable” and “undesirable” communities.

- A tax system that treats tenants unfavourably in comparison to affluent homeowners, encourages over-consumption of housing and acquisition of land by the wealthy and encourages wealthy investors and private equity firms to treat peoples’ homes as commodities for speculation and financialization, leading to displacement of protected groups and increased socio-economic segregation.

- Widespread systemic discrimination in access to existing rental housing where landlords of more affordable apartments select from multiple applications for tenancy, based on income, credit, references and other socio-economic factors, denying low-income households and

those most at risk of homelessness access to the most affordable and decent housing on the market;

- Real estate practices and large-scale acquisitions of urban land and housing stock that creates spatial segregation based on socio-economic status (and inextricably linked to systemic racial discrimination, colonization and other forms of systemic discrimination);

- Systematically underfunding support services for persons with disabilities to live independently in the community, forcing them to remain in inappropriate institutional and other settings.

- Failures to ensure equal access to justice for violations of rights to life, security of the person, equality and other human rights of vulnerable groups in the context of housing.

2. The right to substantive equality and non-discrimination should be applied to provide effective remedies to systemic violations of the right to housing

The CESCR has directed in General Comment No. 9 that "domestic law should be interpreted as far as possible in a way which conforms to a State's international legal obligations." In particular. **"[g]uarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights."** This principle is of particular importance for access to justice to address systemic violation of the right to housing in Canada.

All of the forms of systemic discrimination identified above should be subject to effect remedies under Canadian law as violations of rights to non-discrimination and equality. The right to housing is not included in the *Canadian Charter of Rights and Freedoms* [the Canadian Charter] as a self-standing justiciable right, and it has not been included as such in provincial, territorial or federal human rights legislation. The right to equality and non-discrimination, on the other hand, is subject to robust protection, both in the Canadian Charter of Rights and Freedoms (section 15) and in provincial, territorial and federal human rights. It is understood as a protection not just from direct discrimination on a wide range of prohibited grounds, including grounds related to social and economic disadvantage, but also as a guarantee of substantive equality, requiring governments and private actors to take positive measures to address systemic inequality. The right to substantive equality in Canada should, if properly applied, afford significant protection of the right to housing for those who face systemic inequality and exclusion within Canada's housing system.

During the negotiations of the text of the Canadian Charter, human rights organizations advocated successfully for changes to the wording of the right to non-discrimination in section 15 of the Charter to guarantee not only the right to the equal protection of the law, but also a positive right to the equal "benefit" of the law. This was intended to ensure that equality would be interpreted by courts consistently with Canada's historic commitment to economic, social and cultural rights in international law, including the right to housing.[1]

The Supreme Court of Canada has stated on numerous occasions that the Canadian Charter should be assumed to provide at least the same level of protection as is afforded by international human

[1] Kerri Froc,"A Prayer for Original Meaning: A History of Section 15 and What It Should Mean for Equality" (2018) 38(1) National Journal of Constitutional Law 35–88; Bruce Porter, "Expectations of Equality" (2006) 33 *Sup Ct L Rev* 23.

rights ratified by Canada. "The presumption of conformity is based on the rule of judicial policy that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result."[2]

As has been pointed out by both the CESCR and the former UN Special Rapporteur in his Report on his Mission to Canada, it is critical that Canadian governments promote interpretations of the right to equality consistent with the right to housing, recognizing that these rights are interdependent and indivisible. As noted by Special Rapporteur Miloon Kothari in his report on his mission to Canada: "Given the absence of explicit provisions in Canadian law guaranteeing the right to adequate housing, the interpretation of the open-ended provisions of the Canadian Charter of Rights and Freedoms is critical for giving domestic effect to this right in Canada. Denial of the right to adequate housing to marginalized, disadvantaged groups in Canada clearly assaults fundamental rights in the Canadian Charter of Rights and Freedoms, even if the Charter does not explicitly refer to the right to adequate housing."[3]

Access to effective remedies to discrimination by private landlords and other private actors relies on provincial, territorial and federal human rights legislation. Here too, the right to non-discrimination and equality guarantees substantive equality, requiring positive measures by both governments and private actors to address systemic discrimination and disadvantage. Where policies or practices do not explicitly single out protected groups for adverse treatment but have an adverse effect on access to housing for groups protected from discrimination, these can be challenged as discriminatory. Respondents are required to adapt policies where necessary and to accommodate the needs of protected groups, where doing so would not impose a disproportionate or under burden. The Supreme Court of Canada has adopted a rigorous standard for assessing what constitutes "undue hardship" or disproportionate burden that is analogous to the "maximum of available resources" and "all appropriate means" standard in article 2(1) of the ICESCR. This means that systemic practices leading to development-based displacement of low- income communities or tenant selection that disproportionately disqualifies members of disadvantaged groups can be challenged as discriminatory - even if protected groups are not directly targeted.

[2] *R. v. Hape*, [2007] 2 S.C.R. 292 para 53.

[3] United Nations Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Miloon Kothari - Addendum - Mission to Canada (9 to 22 October 2007)*, UN Human Rights Council OR, 10th Sess, UN Doc A/HRC/10/7/Add.3, (2009) at para 29.

3. The denial of access to justice for rights to equality and non-discrimination in housing in Canada

In spite of the relatively robust and inclusive protections of the right to non-discrimination in housing in the Canadian Charter and in human rights legislation, systemic discrimination and inequality in housing has rarely been challenged in Canada. Rights claimants in the area of housing have little access to representation and assistance, and courts and tribunals have usually resisted the application of substantive equality to systemic housing and homelessness issues. The right to equality in housing has been largely reduced to a right to formal equality and even the right to formal equality is rarely enforced in housing. Surveys have revealed widespread discrimination on prohibited grounds in housing, yet housing cases make up a small fraction of the cases before human rights tribunals across Canada.

Rather than promoting or accepting interpretations of the right to equality that are consistent with the Canada's recognition of housing as a human right under international law, Canadian governments have urged courts to reject equality claims from those in need of housing by mischaracterizing them as non-justiciable claims to a self-standing right to housing. Canadian governments and courts have applied what international human rights scholars have described as a false "negative inference" drawn from the absence of the right to housing in the Canadian Charter. Rather than interpreting the right to equality, as directed by the CESCR, so as to provide effective remedies to violations of the right to housing, governments and courts have done the opposite in Canada, mischaracterizing claims to substantive equality in housing as claims to a self-standing right to housing.

In the case of *Tanudjaja et al v Canada et al*, the government and the courts accepted as uncontested that homelessness in Canada disproportionately affects persons with disabilities, racialized groups, social assistance recipients, women and other groups that are guaranteed a right to equality and non-discrimination. Yet, the claimants were denied a hearing into whether the government had an obligation to address the adverse effects of homelessness on protected groups by implementing a housing strategy as urged by the CESCR, the Special Rapporteur on the right to housing and many experts in Canada. Instead of considering the claimants' right to substantive equality and the positive obligations on government that flow from that right, the court mischaracterized the equality claim as a claim to "a general freestanding right to adequate housing."[4]

We hope the Special Rapporteur will emphasize in his report the importance of courts, governments and legal advocates, recognizing that the indivisibility and interdependence of the

[4] *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852, para 30.

right to equality and the right to housing should never be used to narrow the scope of the right to equality in housing, but rather to enhance it, recognizing that the two rights are often inseparable, and that the equal enjoyment of the right to housing may often be required by guarantees of equality and non-discrimination, just as measures to address inequality and systemic discrimination may be required, in other jurisdictions, by the guarantee of the right to housing.

4. Addressing discrimination in housing against lower income households and social assistance recipients.

The CESCR and, more recently, the UN Human Rights Committee, have recognized that States must prohibit discrimination on the basis of "socio-economic status"[5] or "economic and social situation".[6] Discrimination against lower income households is widespread in Canada, and as a result, most human rights legislation provides at least some protection from discrimination because of "social condition", "social and economic disadvantage" or "receipt of public assistance." Despite these protections, discrimination on the basis of low income or reliance on social assistance remains incredibly widespread and access to justice is virtually non-existent for those who are denied access to almost any housing they can find because of it.

A recent survey conducted for the Ontario Human Rights Commission found that of all the groups identified for protection from discrimination under Ontario's Human Rights Code, social assistance recipients face the most widespread prejudice and stigma.[7] Even though this is a prohibited ground of discrimination under human rights legislation, landlords continue to discriminate on this ground with virtual impunity. Only 2% of cases filed at the Ontario Human Rights Tribunal deal with discrimination on the ground of receipt of public assistance. In the last three years, there has only been one case in which a complaint of discrimination on this ground was upheld, and it was a case of intersecting discrimination on the grounds of disability and receipt of public assistance.[8]

In addition to facing direct discrimination and prejudice as identified by the Ontario Human Rights Commission's survey, social assistance recipients face related systemic discrimination from governments, which have systematically and knowingly denied social assistance recipients the supports they would need to access needed housing. The maximum amount that is available for social assistance recipients for housing is grossly inadequate in comparison to the real cost of housing and this is a leading cause of homelessness, as well as other indignity and deprivation affecting members of this group. In Toronto, for example, the average cost of an apartment with no

[5] CCPR/C/GC/36; Whelan v. Ireland (CCPR/C/119/D/2425/2014), para. 7.12;.
[6] CESCR, *General Comment 20*, E/C.12/GC/20 para 35.
[7] Ontario Human Rights Commission, *Taking the Pulse: People's opinions on human rights in Ontario* (2017). Available online: http://www3.ohrc.on.ca/sites/default/files/Taking%20the%20pulse_Peoples%20opinions%20on%20human%20rights%20in%20Ontario_accessible_2017_2.pdf.
[8] Ramnarine-Smith v. Havcare Investments Inc., 2018 HRTO 878. Available online: https://www.canlii.org/en/on/onhrt/doc/2018/2018hrto878/2018hrto878.html?searchUrlHash=AAAAAQAeInJlY2VpcHQgb2YgcHVibGljIGFzc2lzdGFuY2UiAAAAAAE&resultIndex=5.

bedrooms is $1,211 but the maximum shelter allowance provided for a social assistance recipient is $390. A single parent with two children receives $697 for their housing costs but the average rent for a three-bedroom apartment in Toronto is $1,661. Setting shelter components at levels that make it impossible to secure housing clearly represents a failed government policy that has an adverse effect on a group that is guaranteed a right to substantive equality in access to housing. Several years ago, social assistance recipients in Ontario attempted to challenge this discrimination, but their claims were denied a hearing.

It would be helpful for advocacy on systemic discrimination against those who rely on social assistance in Canada and elsewhere if the Special Rapporteur's report identified the need to ensure access to justice for both direct discrimination based on income level and reliance on assistance, and for systemic violations of equality resulting from governments' failure to provide sufficient levels of income assistance or housing subsidy to ensure reasonable access to housing.

5. Addressing the intersectionality of socio-economic status and other grounds

In addressing systemic discrimination and segregation in housing in Canada, it has been critical to identify and challenge the intersection of socio-economic status and situation with other grounds of discrimination. While direct discrimination and differential treatment based on race, Indigenous status, age, receipt of social assistance, family status, ethnicity, sexual orientation, gender identity and other grounds remains widespread in housing in Canada, members of these groups are excluded from housing by tenant selection practices that have become virtually universal across the country. Rather than renting apartments on a "first come first served" basis (which gave those who are most desperate to find housing a chance to secure an apartment), most landlords and property managers now collect multiple applications from prospective tenants, requiring information on income level, employment, previous landlords and credit. They then select the most "desirable" tenant deemed to constitute the least likely to default on rent or to cause problems.

Because of dominant patterns of income disparity and socio-economic disadvantage linked to systemic racism, sex discrimination, colonization, migration and age, the result of this kind of tenant selection is to disproportionately exclude members of disadvantaged groups facing discrimination and give preference to white, able-bodied households without children. Many landlords are now relying on firms such as "Naborly" to collect and assess information on applicants for apartments in order to rank them based on assumed risk of default or eviction. The result of these practices has been devastating for the most disadvantaged households, who are forced into the most over-priced and badly maintained housing in marginalized and under-serviced communities.

A study done for the Centre for Equality Rights in Accommodation based on census data on tenants who had moved in the previous year found that the majority of single mothers in receipt of social assistance were forced to rent in the most expensive third of apartments. Only one quarter of single mothers with two children living in poverty were able to secure an apartment that was in the more affordable third of apartments and more than half rented apartments which were in the most expensive third. Only 15% of couples on social assistance with two children and 13% of couples with one child relying on government transfer payments were able to rent affordable apartments. In other words, the systemic effect of tenant selection based on perceived "risk of default" is to deny lower income households, who face widespread discrimination, access to the more affordable and decent apartments, forcing them to rent over-priced and undesirable apartments, with increased vulnerability to ongoing housing and affordability problems.

Tenant selection based on income level, credit, landlord references and employment requirements was successfully challenged by the Centre for Equality Rights in Accommodation and the Ontario Human Rights Commission in a number of important systemic human rights cases. In *Kearney v.*

Bramalea Ltd. (No. 2)[9] extensive evidence and testimony was considered in relation to three individual claims heard together - a Black single mother who had come to Canada with her children as a refugee, a young couple just starting out and a young single woman, all of whom were denied relatively affordable apartments based on landlords' income-based "affordability" criteria, requiring that tenants not be paying more than 30% of their income toward rent. The individual claimants were supported by many civil society organizations which intervened in the case. In an unprecedented ruling, selecting tenants based on income level was found to constitute unjustifiable adverse effect discrimination on multiple grounds, including race, place of origin, age, receipt of public assistance and family status. Moreover, the evidence suggested that low income at the time of renting an apartment is not a reliable indicator of risk of default. In Ontario, 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 being in receipt of social assistance at the time of application.[10]

The decision in the *Kearney* case was subsequently upheld on judicial review.[11] In subsequent cases, credit and reference requirements were found to constitute discrimination against recent immigrants and young people who are unable to provide them.[12] Unfortunately, these legal victories prompted a right-wing government in Ontario to amend Ontario's Human Rights Code to permit tenant selection based on multiple socio-economic factors including income level, employment, credit and landlord references where these factors are considered together and not singularly.[13]

We believe it would be helpful if the Special Rapporteur could emphasize in the upcoming report that denying access to apartments on the basis of income level or other indicators linked to socio-economic situation constitutes discrimination contrary to the ICESCR, as recognized in General Comment 20, and that States must take necessary measures to prevent this practice Tenants should generally be rented apartments on a first come first served basis in the private market, and only disqualified when there are clear, non-discriminatory grounds for doing so.

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[9] 1998 CanLII 29852 (ON HRT). Available online: https://canlii.ca/t/gc6b4.

[10] CERA, SRAC. Human Rights and Rental Housing in Ontario. September 2007. Available online: http://socialrights.ca/documents/cera-srac-ohrc.pdf.

[11] *Shelter Corp. v. Ontario (Human Rights Comm.)*, 2001 CanLII 28414 (ON SCDC). Available online: https://canlii.ca/t/1wcz5

[12] *Ahmed v. 177061 Canada Ltd (Shelter Canadian Properties Ltd.)*, 2002 CanLII 46504 (ON HRT), https://canlii.ca/t/1r5tk; Sinclair v. Morris A. Hunter Investments Ltd., 2001 CanLII 26232 (ON HRT), https://canlii.ca/t/1r4ss; Vander Schaaf v. M & R Property Management Ltd., 2000 CanLII 20867 (ON HRT), https://canlii.ca/t/1r3wm.

[13] Section 21(3) was added to the Human RightsCodestating that "The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed if a landlord uses in the manner prescribed under this Act income information, credit checks, credit references, rental history, guarantees or other similar business practices which are prescribed in the regulations made under this Act in selecting prospective tenants. 1997, c. 24, s. 212 (1).

6. Discrimination against those who are experiencing homelessness

Persons who are experiencing homelessness are subject to widespread violence, discrimination and stigmatization in Canada. They are routinely and viciously evicted from their homes without any protections of dignity or security of tenure. In a few cases, those experiencing homelessness have been successful in challenging local by-laws that prevent them from creating temporary shelters in parks or public spaces when no shelter spaces are available. But the absence of any legal protection of security of the home for those who live in public spaces in Canada has never been successfully challenged as discrimination.

Courts have been reluctant to recognize homelessness as a ground of discrimination that should be prohibited as an "analogous" ground under section 15 of the Canadian Charter. In the case of *Abbotsford (City) v. Shantz*,[14] City employees orchestrated the eviction of homeless persons from a camp by spreading chicken manure throughout the campsite. Yet, the court was unwilling even in that case to recognize homelessness as a ground of discrimination analogous to other grounds, under the *Canadian Charter*. The question of whether homelessness constitutes an analogous ground of discrimination remains unresolved in Canada, and it would be helpful if the Special Rapporteurs Report made it clear that this ground must be recognized as a prohibited ground of discrimination and subject to effective remedies.

[14] 2015 BCSC 1909 (CanLII).

7. The housing crisis faced by Indigenous Peoples in Canada

Colonization, racism and discrimination have deeply impacted Indigenous communities' access to adequate housing in Canada. Indigenous households in urban arears and off-reserves are disproportionately in 'core housing need' in Canada, meaning that they cannot access housing that is affordable, in adequate condition, and of a suitable size for their households. While the 2016 Census indicates that Indigenous people account for only 4.9% of the total population in Canada,[15] 18% of Indigenous households were in core housing need, compared to 12% of non-Indigenous households.[16]

Indigenous people are also overrepresented among homeless populations, with research showing that 1 in 15 Indigenous people in urban centres experience homelessness, compared to 1 in 128 among the general population.[17] According to the 2018 Point in Time count of homeless individuals, 30% of respondents identified as Indigenous, as compared to 5% of the population in Canada who identified as Indigenous in the 2016 census.[18] On-reserve Inuit and First Nations households fare the worst compared to other households in Canada across all housing adequacy standards. Over 25% of on-reserve First Nations people are living in crowded conditions, which is 7 times the proportion of non-Indigenous people nationally. Nearly 5,500 homes on Manitoba First Nations either require major renovations or need to be replaced. More than 10,000 on-reserve homes in Canada are without indoor plumbing, and 25% of reserves in Canada have substandard water or sewage systems.[19] 58 long-term drinking water advisories are in effect in 39 First Nations communities across Canada.

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[15] Statistics Canada, Aboriginal Peoples in Canada: Key results from the 2016 Census. Available online: https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm.

[16] Canada Mortgage and Housing Corporation, 18% of Indigenous Households in Core Housing Need. May 28, 2019. Available online: https://www.cmhc-schl.gc.ca/en/blog/2019-housing-observer/indigenous-households-core-housing-need.

[17] Belanger, Yale, Weasel Head, Gabrielle, & Awosoga, Olu. Homelessness, Urban Aboriginal People, and the Need for a National Enumeration, 2013. Available online: https://journals.library.ualberta.ca/aps/index.php/aps/article/view/19006/pdf

[18] Government of Canada. (2020, August 31). *Everyone Counts 2018: Highlights - Report*. Available online: https://www.canada.ca/en/employment-social-development/programs/homelessness/reports/highlights-2018-point-in-time-count.html#3.

[19] Idil Mussa. (2019, October 18). *Indigenous communities face 'abhorrent' housing conditions, UN report finds*. CBC. Available online: https://www.cbc.ca/news/canada/ottawa/indigenous-communities-struggle-to-find-adequate-housing-in-canada-and-abroad-1.5326161.

Discrimination and inequality in Indigenous housing conditions must be addressed in conformity with the United Nations Declaration on the Rights of Indigenous Peoples, integrating the right to self-determination, the principle of free, prior and informed consent, the right to land, territories and resources, the right to the improvement of housing conditions, without discrimination, to be actively involved in developing and determining housing and other economic and social programmes and, as far as possible, to administer such programmes through their own institutions and the right of access to justice based on Indigenous understandings.[20]

[20] UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, articles 21, 23. See also UN General Assembly, *Report of the Special Rapporteur on adequate housing* (17 July 2019) A/74/183.

8. Discrimination affecting racialized communities and (im)migrants in Canada

Discrimination based on race is common in the context of housing, but it is very difficult to prove, and frequently dismissed at human rights courts and tribunals. Discrimination related to race, colour, ethnicity and/or place of origin is rarely overt but emerges through indirect comments and excuses as to why a particular housing unit is not suitable or available for an individual housing-seeker. Landlords who do not want to rent to (im)migrants and racialized individuals may arbitrarily impose illegal requirements like asking for excessively large deposits, ask for a Canadian credit history that they may not have, or require guarantors.

In 2012 CERA conducted a study on discrimination in Toronto's rental housing market which found that approximately 85-92% of recent (im)migrants experience significant barriers to accessing rental housing due to discrimination.[21] Unfortunately, these communities face many barriers to challenging discrimination because they may not be familiar with their legal rights or how to claim them.

Landlords also use screening methods to exclude groups based on their names and perceived ethnicity, eliminating potential renters even before they have a chance to view an available unit. Discrimination against Black renters in particular a common barrier to accessing adequate housing. Discrimination based on race and income have also created highly segregated neighbourhoods in some of Canada's major urban centres. In Toronto, Canada's largest city, racialized individuals are concentrated in low-income neighbourhoods, and Black Torontonians in particular are over-represented in these neighbourhoods even though half of these residents hold a post-secondary degree. These neighbourhoods, segregated by race, are underdeveloped, experience underinvestment, and are on the periphery of the city. There are fewer job opportunities, city services and insufficient infrastructure like transit, which makes living in these neighbourhoods more difficult and costly to access employment and services.

[21] Centre for Equality Rights in Accommodation, *Housing Equality for New Canadians: Measuring Discrimination in Toronto's Rental Housing Market*. 2013. Available online: https://www.equalityrights.org/reports/measuring-discrimination-in-toronto-housing-market.

9. Discrimination faced by people living with disabilities

People living with disabilities experience housing inequality through outright tenancy denials, a severe lack of accessible buildings and non-inclusive housing design. Many provincial codes for building standards directly contribute to the inequality in housing experienced by persons with disabilities. People living with disabilities also face discriminatory negative attitudes and stereotypes that prevent them from accessing housing.

It is estimated that people with disabilities or living with diagnosed mental health conditions make up 45% of Canada's homeless population. Over 30% of adults with disabilities live in rental housing, and almost 45% of these renters live on low incomes compared to 25% of renters without disabilities. Disability support programs fail to meet the cost of housing in all provinces and territories.[22]

For persons with disabilities, the likelihood of being in core housing need is at least 16% higher than persons without disabilities; as of 2012, 15.3% of persons with disabilities were living in core housing need compared to 9.2% of persons without disabilities.[23] Women with disabilities have a higher likelihood of living in core housing need at 16.9% as compared to men with disabilities represented at 13.2% in core housing need.[24]

Human rights tribunals and courts have failed to provide effective remedies to systemic discrimination against persons with disabilities, particularly where these involve failures to allocate adequate resources to ensure necessary supports and services. In a case that was recently heard by a human rights tribunal in Nova Scotia, many individuals who have been forced to remain in institutions challenged the province's decision to severely restrict funding for support services and housing for community living as discriminatory under provincial human rights legislation. The tribunal upheld individual claims of discrimination but dismissed the claim advanced by the

[22] Alzheimer Society of Canada, Arch Disability Law Centre, Canadian Association for Community Living, Canadian Mental Health Association (Toronto Branch), Council of Canadians with Disabilities, IRIS, People First of Canada, Social Rights Advocacy Centre, & Wellesley Institute. (2017, May 15). *Meeting Canada's Obligations to Affordable Housing and Supports for People with Disabilities to Live Independently in the Community.* Available online: https://www.ohchr.org/Documents/Issues/Housing/Disabilities/CivilSociety/Canada-ARCHDisabilityLawCenter.pdf

[23] CMHC. (2018, August 23). *Persons with disabilities: 15% live in core housing need.* Available online: https://www.cmhc-schl.gc.ca/en/housing-observer-online/2018-housing-observer/persons-with-disabilities-15-percent-live-core-housing-need.

[24] Canada Mortgage and Housing Corporation (CMHC). (2018, May). *Housing conditions of persons with disabilities.* Available online: https://assets.cmhc-schl.gc.ca/sf/project/cmhc/pubsandreports/research-insights/research-insight-housing-conditions-persons-disabilities-69354-en.pdf?rev=f51bd6dd-f1ef-4cfb-9dbf-9a1d1010ef60.

Disability Rights Coalition that the denial of access to independent living in Nova Scotia is part of a systemic pattern that constitutes systemic discrimination. The tribunal chair stated that he "resisted" the evidence of Catherine Frazee, a renowned expert, on systemic discrimination on the ground of disability. "If I am speaking from a position of privilege and am "un-woke", then so be it".[25] He reported that he has never even seen a 'taint' of the ableism about which Dr. Frazee testified and dismissed the systemic complaint. The tribunal's decision is currently under appeal before the Nova Scotia Court of Appeal. [26]

It is critical that human rights tribunals and courts interpret the right to equality and non-discrimination in housing consistently with Article 19 of the *Convention on the Rights of Persons with Disabilities (CRPD)*, guaranteeing the right to live independently and be included in the community. Based on the CRPD, persons with disabilities must have the opportunity to choose where and with whom they live; have access to a range of community support services to facilitate inclusion in the community and prevent isolation or segregation. The standard to be applied in assessing the implementation of the right to live independently in the community is that governments must adopt "effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right."[27]

In its most recent review of Canada's compliance with article 19, the Committee on the Rights of Persons with Disabilities recommended that Canada adopt a national guideline on the right to live independently and be included in the community; that it adopt a human-rights based approach to disability in all housing plans; ensure that provinces and territories establish a timeframe for closing institutions and create a comprehensive system of support for community living; ensure that accessibility legislation facilitates inclusion in the community and implement appropriate service provision within First Nation communities.[28]

[25] *Beth MacLean, Sheila Livingstone, Joseph Delaney and Mafty Wexler, for the Disability Rights Coalition (Complainants) - and - The Attorney General of Nova Scotia (Respondent) - and - The Nova Scotia Human Rights Commission* Decision of the Board of Inquiry on the prima facie case (HRC Case No. 1414-0418) (March 4, 2019) p. 60.

[26] NSCA Case No. 486952. *Disability Rights Coalition, Beth Maclean, Olga Cain on behalf of Sheila Livingstone, Tammy Delaney on behalf of Joseph Delaney v. The Attorney General of Nova Scotia*.

[27] *Ibid*, article 19.

[28] Committee on the Rights of Persons with Disabilities, Concluding observations: Canada (8 May 2017) CRPD/C/CAN/CO/1.

10. Gendered discrimination

Women's experiences of housing discrimination are invariably related to their gender and are often related to other characteristics such as their family or marital status, their race/colour, age or disability[29]. Women and LGBTQ+ individuals experience disproportionate discrimination in housing for a variety of reasons, like earning lower levels of income due to the persistent wage gap, which makes housing less affordable and out of reach for many.

The overwhelming majority of single-parent households in Canada are headed by women who also report feeling discriminated against because of their family status. Many lower-income neighbourhoods also have fewer services, which disproportionately impacts single mothers who need access to services like childcare.

Women in Canada face disproportionate rates of violence and account for 79% of those who experience violence by an intimate partner,[30] particularly Indigenous women, women of colour, those identifying as LGBTQ+, women living in rural areas or northern Canada, older women, refugee or (im)migrant women. For women who have experienced violence, leaving their abusive partner or family is difficult due to the lack of safe and affordable housing. Many turn to emergency shelters that are often full on any given night and are turned away. As a result, they stay within abusive situations or become part of the large number of individuals in Canada who are experiencing invisible homelessness like couch surfing.[31]

There have been a number of inquiries and recommendations with respect to Missing and Murdered Indigenous Women and Girls that have revealed the particular vulnerability of Indigenous women to violence when they are homeless. The Inquiry initiated under CEDAW's Inquiry points to the interconnection between systemic discrimination in the legal system, the inadequacy of on-reserve housing, Indigenous women's homelessness and their experience of grossly disproportionate violence, all critically important systemic issues that should be addressed

[29] Karen Vecchio. Surviving abuse and building resilience – A study of Canada's systems of shelters and transition houses serving women and children affected by violence. Report of the Standing Committee on the Status of Women. 2019. Available online: https://www.ourcommons.ca/DocumentViewer/en/42-1/FEWO/report-15/.
[30] Statistics Canada, Family violence in Canada: A statistical profile, 2018. Available online: https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00018/02-eng.htm.
[31] Schwan, K., Versteegh, A., Perri, M., Caplan, R., Baig, K., Dej, E., Jenkinson, J., Brais, H., Eiboff, F., & Pahlevan Chaleshtari, T. (2020). The State of Women's Housing Need & Homelessness in Canada: Key Findings. Hache, A., Nelson, A., Kratochvil, E., & Malenfant, J. (Eds). Toronto, ON: Canadian Observatory on Homelessness Press. Available online: https://womenshomelessness.ca/wp-content/uploads/State-of-Womens-Homelessness-Literature-Review.pdf.

as some of the most serious forms of systemic inequality and discrimination in housing, demanding urgent action.[32]

As with other forms of discrimination in housing, addressing systemic discrimination in housing also requires addressing systemic discrimination in access to justice. A petition against Canada considered under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women is telling in this regard. Cecelia Kell, an Indigenous woman belonging to Behchokǫ̀ community in the Northwest Territories submitted a communication describing how she had been evicted from her home by a violent spouse and deprived of housing designated for Indigenous households by the local housing authority, on which her violent spouse was a board member. While she and her children were recovering in a women's shelter from the violence he had inflicted on them, her abusive spouse had changed the locks and then used his position with the Housing Authority to remove her name from the lease. Kell's struggle to regain her home revealed a racist and sexist legal system and a legal culture within courts and among legal aid lawyers that refused to recognize the legitimacy of her claim to the return of her home. [33]

The Canadian legal system must become more attuned to the intersectional nature of discrimination in housing, and reflective of how systemic discrimination within a housing system that denies particular groups a right to a home is reduplicated in a legal system which similarly refuses to recognize their fundamental rights and denies them hearings.

[32] Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (30 March 2015) CEDAW/C/OP.8/CAN/1, para 112.

[33] Jessie Hohmann, Lolita Buckner Inniss and Enzamaria Tramontana, "Cecilia Kell v Canada" in Loveday Hodson and Troy Lavers (eds), *Feminist Judgments in International Law* (Hart 2019).

11. Discrimination faced by youth

One of the main barriers youth face when accessing housing is discrimination from housing providers. This may be on the basis of their identity in a code-protected group, or because they are sole-support parents, receive social assistance, lack credit or rental history, are students, or do not satisfy minimum income requirements. Lack of knowledge on their legal rights further make young people vulnerable and they seldom seek support for accessing justice even after their rights have been violated. Their barriers to access housing are aggravated through intersectional challenges of multiple factors including age, race, gender identity and expression, and receipt of social assistance[34].

For young people 16 years and older, housing discrimination appears to be the norm. In fact, youth seem to expect discrimination. In some instances, youth have internalized this discrimination, believing that landlords are justified in not renting to them, explaining that they "understand" that the combination of age, low-income and/or receipt of public assistance makes them a "business risk".

[34] Centre for Equality Rights in Accommodation, *Getting It Right: Putting human rights at the centre of youth housing strategies* (November, 2018). Available online: https://static1.squarespace.com/static/5e3aed3ea511ae64f3150214/t/5e7a1c275467707348247dc7/1585060905097/Getting%2BIt%2BRight%2B-%2BEnglish%2Bversion.pdf.

12. Financialization and development-based displacement of disadvantaged communities

In recent years, Canada's housing system has been radically transformed by a phenomenon known as the financialization of housing. This refers to the way in which housing is bought, sold, traded and priced as a portfolio asset for speculation, rather than being rented or sold based on its value as a social good, with government oversight, regulation and direct involvement.[35] Canadian housing markets have been dramatically affected by the financialization of housing, as described in the Special Rapporteur's 2017 Report on this issue.[36] Massive private equity firms, offshore investors looking for places to park capital, tax evaders and an increasing number of wealthy investors within Canada treat housing as a commodity through which to accumulate wealth and leverage debt, rendering housing in cities such as Toronto and Vancouver among the most unaffordable in the world.[37]

The financialization of housing both exploits and exacerbates inequality and discrimination in access to housing. Financial investors follow a business model based on buying up low rental housing occupied by racialized, (im)migrants and single parent households. The investors then seek to dramatically increase the market value of the properties by forcing the existing residents out of their housing and communities in order to "upgrade" the housing, making it unaffordable for the lower-income households who previously lived there, and renting renovated or new housing to higher income, more advantaged households. This increases the market value of the properties significantly, providing equity for further investment. Unprecedented wealth for investors and other property owners has been secured by displacing lower income households out of their communities and depleting the existing stock of affordable housing faster than it can be replaced by social housing programs.[38]

If a workplace were purchased by a new employer who immediately fired the existing workforce in which most employees were racialized, single parents, persons with disabilities and (im)migrants, and hired white, able-bodied workers with no children, this would likely be challenged as discriminatory. Yet a business practice that systemically evicts or displaces members of protected groups from the communities in which they live, premised on increasing the value of properties by

[35] Leilani Farha and Bruce Porter, *Commodification over community: financialization of the housing sector and its threat to SDG 11 and the right to housing in Spotlight on Sustainable Development* (Social Watch, 2017) 105.
[36] A/HRC/34/51 (18 January 2017).
[37] Urban Reform Institute, Demographia International Affordability International 2021 Edition. Available online: https://urbanreforminstitute.org/wp-content/uploads/2021/02/Demographia-International-Housing-Affordability-2021.pdf.
[38] *Yusuf et al v Timbercreek Asset Management, Mustang Equities, TC Core LP, TC Core GP and The City of Ottawa* HRTO File No. 2019-36509-I.

engineering a more 'advantaged" set of residents, has rarely been challenged as discriminatory before courts or tribunals.

Residents of the community of Herongate in Ottawa, have changed that. Herongate is a close-knit and vibrant neighbourhood in Ottawa comprised predominantly of (im)migrants, racial and religious minorities and persons relying on social assistance. These groups originally moved into Herongate because the housing was more affordable, but it soon developed as a community in which residents found cultural, linguistic and other forms of community support. It has the second highest proportion of low-income people in the Ottawa-Gatineau region.[39]

In 2013 a multi-billion dollar asset management company named Timber Creek acquired extensive properties in the Herongate community and implemented a phased demolition of some of the existing affordable housing and proposed a massive development of new residential housing. Large numbers of Herongate tenants were evicted, 93% of whom were racialized.[40] The proposed development at Herongate aimed to attract a predominantly affluent, white and non-immigrant community.

Residents are challenging the proposed development as a violation of their right to equality and non-discrimination. The complaints filed by the residents of Herongate offer a unique opportunity to address the discriminatory consequences of the financialization of housing and of housing development that ignores the needs and circumstances of existing residents. It also provides a basis for challenging Canadian law and practice in relation to evictions and displacement of vulnerable communities that is at odds with international human rights norms.

In Canada, communities are redeveloped without any requirement of meaningful engagement with residents about where they will live during the development or if they desire to return. Residents are evicted without the provision of alternative accommodation; and affordable housing is replaced by unaffordable housing, making it impossible for residents to return to their communities after they have been redeveloped. The complaints filed by the Herongate community before the Ontario Human Rights Tribunal alleges that developers should be required to consider and address the needs of disadvantaged groups relying on housing slated for redevelopment. They argue that this accommodation is required in order to prevent or mitigate the discriminatory effects of the proposed development on disadvantaged groups that have relied on the community for affordable housing and access to cultural life.[41]

If growing inequality and segregation in housing is to be adequately addressed, it must be addressed in relation to the large-scale acquisition and development of housing. It needs to be established that developers are required by human rights legislation to accommodate the needs of existing residents by meaningfully engaging with them about their housing and community needs and then accommodating the housing and community needs of existing residents in any development of new or renovated housing. Where government subsidy or support is required to

[39] Ibid.
[40] Ibid.
[41] Ibid.

ensure that existing residents are able to afford the cost of upgraded housing, governments must also be required to accommodate needs for which they are responsible. We believe the Special Rapporteur's report could help clarify the obligations of municipalities in overseeing development and of municipalities charged with planning and zoning for new developments, to protect and ensure the rights of existing residents.

13. Addressing systemic discrimination under the National Housing Strategy Act (NHSA)

Canada has now recognized housing as a fundamental right under the National Housing Strategy Act (NHSA), passed in June 2019. The National Housing Strategy Act (NHSA) recognizes that "housing is essential to the inherent dignity and well-being of the person" and that it is "a fundamental human right affirmed in international law." It provides opportunities for affected individuals and groups to make submissions to a Federal Housing Advocate on systemic issues. The Federal Housing Advocate will submit findings and recommended measures to Canada's Minister of Families, Children, and Social Development, who is required to respond in 120 days or, alternatively, may refer the issue to a Review Panel which will hold hearings and submit findings and recommended measures to the Minister.

The NHSA supplements but certainly does not replace judicially enforceable components of the right to housing contained in a range of statutes and laws, including the right to equality and non-discrimination under human rights legislation and the Canadian Charter. The NHSA focuses on addressing systemic issues linked to inequality and exclusion which often transcend individual rights claims and which courts and tribunals have been ineffective in addressing. To ensure effective remedies, the NHSA adopts a less adversarial approach to rights claiming, relying on ongoing participatory processes, facilitated by the Federal Housing Advocate, through which systemic barriers to the realization of the right to housing are examined and human rights obligations clarified. Findings and recommended measures are not binding like court orders, but they require a response. This novel approach will not work, however, if the commitments to the right to housing and the elimination of systemic barriers are considered somehow optional or of less importance because they are not enforceable in court. As recently affirmed by the Supreme Court of Canada, international human rights "were not meant to be theoretical aspirations or legal luxuries, but moral imperatives and legal necessities." Governments are legally required to comply with international human rights commitments "in good faith" and the effectiveness of the NHSA will rely on governments honouring that obligation. If they do, the NHSA provides an historic opportunity to address all of the systemic issues identified above.

14. Discrimination in housing faced by marginalized groups prioritized under international human rights law

The COVID-19 pandemic has further exacerbated the vulnerabilities faced by many communities struggling to make ends meet. Across the country, income loss due to the pandemic has pushed many individuals further into poverty. The Canadian federal government has provided emergency income assistance to workers who faced income loss because of the pandemic, but the Canada Emergency Response Benefit (CERB) is a flat rate across Canada and does not adjust to the high cost of housing in many parts of the country. For instance, $2000/month is inadequate for a tenant household paying the average rent of $1661 for a 2-bedroom apartment in Toronto. A flat rate benefit that fails to take into account the different needs of parents with children, persons with disabilities, or the different housing costs faced in different places, is discriminatory because it leaves disadvantaged tenants facing significant arrears accumulated during moratoria on rents, with no means to pay the arrears so as to avoid eviction.

The NRHN and CERA made its first submission under the NHSA to the government recommending measures to address the systemic issue of arrears and evictions. Since the government had still not appointed a Federal Housing Advocate, a year and half after the NHSA became law, the submission was made directly to the government, through the Minister responsible for the NHSA. It proposed a "Federal Government Residential Tenant Support Benefit" for low-and-moderate income tenants who have faced heightened rent affordability challenges as a result of income loss during the pandemic. The benefit will provide what amounts to a retroactive rent subsidy to ensure that rent would make up the same percentage of income in 2020 as in 2019, prior to the pandemic.[42] Unfortunately, the federal government has failed to respond to this submission and has not yet implemented any measures to address the arrears and eviction crisis created by the pandemic.

[42] CERA and the NRHN, *Addressing the Evictions and Arrears Crisis: A Federal Government Residential Tenant Support Benefit* (2021). Available online: https://housingrights.ca/wp-content/uploads/CERA-NRHN-2021-Addressing-the-Evictions-and-Arrears-Crisis.pdf.

15. Recommendations

In our collaborative work with civil society and organizations in other countries working to implement the right to housing and to address systemic discrimination, we have learned that the challenges faced in Canada are far from unique. Systemic discrimination and growing patterns of segregation in housing linked to socio-economic status have become common features of cities world-wide, and financialization is experienced in very common forms, with the same private equity firms operating in many countries.

Therefore, we believe that many of the recommendations that emerge from the above description of challenges faced in Canada may be considered as broadly applicable and may be worth considering for inclusion in the Special Rapporteur's thematic report.

First and foremost, the denial of access to justice for systemic discrimination in housing must be overcome by ensuring that those affected by systemic discrimination in housing have access to assistance and legal representation; that tribunals and courts that hear these cases be properly resourced with adjudicators and judges that have an understanding of discrimination; and that courts recognize the indivisibility and interdependence of the right to housing and the right to equality so as to provide effective remedies to systemic violations of the right to housing – whether by way of the right to equality or the right to housing.

Second, it must be affirmed that the right to equality and non-discrimination places positive obligations on governments to address systemic inequality, including by:

- Ensuring that budgets adequately respond to the housing needs of disadvantaged groups, by allocating sufficient resources to social housing, rental assistance and support services.

- Recognizing homelessness as both a violation of the right to housing and a violation of the right to equality of the groups that are disproportionately affected by it.

- Ensuring that zoning, planning and development, including financialization, are subjected to scrutiny and ensure access to justice through which claimants can challenge the discriminatory effects of proposed developments.

- Reforming tax systems so they alleviate inequality in housing systems and discourage speculation and financialization of housing.

- Clarifying that the use of income, credit, references and other socio-economic factors deny lower-income households and those most at risk of homelessness access to the most affordable and decent housing on the market, is discriminatory.

- Challenging real estate practices and large-scale acquisitions of urban land and housing stock that creates spatial segregation based on socio-economic status.

- Ensuring adequate support services for persons with disabilities to live independently in the community.

- Promoting and adopting interpretation of the right to equality as interdependent with the right to housing.

- Urgently prioritizing the development and implementation of Indigenous Housing Strategies, including Urban Indigenous strategies, based on the UN Declaration on the rights of Indigenous Peoples and Indigenous understandings of human rights. Enhance access to justice and effective remedies for systemic discrimination both through courts and tribunals and outside of courts, such as under the *National Housing Strategy Act* in Canada, to facilitate meaningful engagement with vulnerable communities as rights-holders, provide for hearings and ensure effective remedial responses by governments.

CERA - EqualityRights.org

NRHN - HousingRights.ca

SRAC - SocialRights.ca

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