Submission to the Ontario Human Rights Commission on

HUMAN RIGHTS AND RENTAL HOUSING IN ONTARIO

by:

The Centre for Equality Rights in Accommodation

and the

Social Rights Advocacy Centre

with

The National Working Group on Women and Housing in

Canada

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I. INTRODUCTION

CERA and SRAC welcome the Ontario Human Rights Commission's (Commission) initiative to review its role in rental housing, and on its background and consultation papers. These papers demonstrate a commitment to promoting and enforcing the *Human Rights Code's*[1] (the *Code*) guarantees of equality with respect to the occupancy of accommodation in light of the broader purposes of the *Code*, and the fundamental values and principles of international human rights, namely, the dignity and equal worth of all members of society, which the *Code* is intended to promote, protect and ensure.

We appreciate the Commission's clear commitment to addressing, among other things, the problem of homelessness and inadequate housing, recognizing that these increasing forms of marginalization and denial of dignity primarily affect *Code* protected groups, and therefore, represent a fundamental attack on the guarantee of equality with respect to the occupancy of accommodation.

We are also pleased with the Commission's recognition of the importance of interpreting and applying the *Code* in light of internationally recognized social and economic rights, particularly the right to adequate housing, and the recognition that "the Commission should, therefore, look to international law to expand current understandings of the *Code* to include economic, social and cultural rights within its mandate. As the *Universal Declaration of Human Rights*[2] reminds us, economic, social and cultural rights go to the core of dignity and equality. In this sense, the present consultation builds on previous important work in this area, particularly the excellent Background Paper prepared for the Commission's Conference in September 2001 on Human Rights Commissions and Economic and Social Rights.

We have attempted, in this paper, to respond to all of the questions raised in the consultation, drawing on CERA's twenty years of experience in the area of human rights in housing, at the provincial, national and international level and SRAC's recognized expertise in the justiciability of the right to housing and other social rights.

A predominant theme, which will inform all of our responses, is that the housing and homelessness crisis in Ontario and Canada is not, primarily, a crisis in housing supply but rather, a human rights crisis, fundamentally related to the exclusion of disadvantaged groups from access to adequate housing through a

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[1]*Human Rights Code*, R.S.O. 1990, c. H.19 [hereinafter *Code*]

[2]*Universal Declaration of Human Rights*, A/RES/217, 10 December 1948 at Palais de Chaillot, Paris [hereinafter UDHR].

variety of forms of discrimination, systemic barriers and failures to respond to and address needs.

The human rights crisis in housing in Ontario has two critical dimensions. The first dimension relates to the way in which housing discrimination has been neglected in the interpretation and application of the *Code* by the Commission, advocates, tribunals, courts and advocates. Given the extent of discrimination in housing, the vulnerability of the groups affected and the severity of its consequences for dignity, security and even life, the relatively minimal attention given to housing discrimination by the Commission, the scarcity of adjudicated claims and the minimal remedies ordered by tribunals brings into question the integrity and inclusiveness of the enforcement of equality rights in Ontario.

The second theme that runs through all of our responses relates to the status of the substantive right to adequate housing, recognized under binding international human rights law. It is widely assumed that the Code cannot be interpreted or applied so as to provide remedies to violations of the right to adequate housing. We will be arguing that in fact, if the *Code* is properly applied to the most critical and systemic issues of discrimination and exclusion in housing, it will go a long way toward ensuring effective domestic remedies to violations of the right to adequate housing, in fulfillment of obligations under international law in this area.

Failure to Adequately Address and Remedy Housing Discrimination

As noted in the Commission's Background Paper entitled *Human Rights and Rental Housing in Ontario*[3], though complaints of discrimination in housing represent only 4% of the Commission's caseload, this does not reflect the actual prevalence or significance of discrimination in housing. In fact, the astonishingly low number of complaints suggests a disturbing discrepancy between the resources devoted to combating discrimination in housing and its prevalence, severity and consequences.

In the early 1990's, when CERA received funding from the provincial government to provide some advocacy and representation of claimants in housing, housing claims were in the range of 8 – 10% of caseload, and CERA was responsible for the majority of complaints filed. CERA also settled a significant number of claims. The decline to half of the number of filed complaints was a direct result of funding cuts by the Harris government in the mid-1990's.

Discrimination in housing tends to affect the most disadvantaged groups. Refugee claimants, those unable to work because of disabilities or those relying on social assistance are more likely to experience discrimination in housing than in employment. There is at least as much discrimination occurring in Ontario in

[3]Ontario Human Rights Commission, Background Paper, *Human Rights and Rental Housing in Ontario* (March, 28, 2007). Available at: www.ohrc.on.ca [hereinafter Background Paper]

housing as in employment. Almost a third of low-income tenants move every year. Surveys have indicated that the majority of landlords violate the Code when they select tenants – particularly low-income tenants.[4] Yet there are about twenty complaints filed in employment for every one filed in housing.

The relatively few number of complaints filed in housing, and the lack of any major response to widespread discrimination in housing by human rights commissions, courts or legislatures is an urgent situation that has attracted the concern and alarm of United Nations human rights treaty monitoring bodies for over a decade, and represents a major crisis in public awareness, access to justice and the rule of law. Landlords, governments and other decision-makers are largely unaware of their obligations under the *Code* and prospective tenants are unaware of their rights. Jurisprudence in human rights in housing is scarce. Indeed, most complaints addressing the major systemic issues in housing have not been adjudicated at the tribunal level in Ontario over the course of the last decade. There is little consensus even on whether widespread practices such as minimum income criteria are now prohibited or not.

The recently adopted human rights reforms in Ontario offer an opportunity for a fresh start and a new focus on discrimination in housing. We will be proposing, in our responses, that a concerted and urgent effort is required to provide adequate representation to claimants, improved public education, strategic litigation and comprehensive and effective remedies.

A Human Rights Strategy to End Homelessness: A Radical Stretch?

Informing this submission and all of our responses to the questions posed in the Commission's Consultation Paper is a key question:

> What would it actually mean in terms of the Commission's role in promoting and enforcing the *Code*, and taking cases before the new Human Rights Tribunal, to recognize homelessness and systemic denial of access to adequate housing to disadvantaged groups as a critical inequality in Ontario that must be addressed, and to interpret and exercise the Commission's mandate under the

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[4]David Hulchanski, Discrimination: Routine Exclusion of Welfare Recipients in Toronto (Toronto, 1992) available online at: http://action.web.ca/home/housing/resources.shtml?x=67199&AA_EX_Session= 6c90c199fa2156857 1fc2416a079f9bb; Centre for Equality Rights in Accommodation Human Rights, Access and Equity: CERA's recommendations for the Homelessness Action Task Force (November, 1998) http://www.equalityrights.org/cera/docs/golden.htm. Professor Hulchanski conducted a survey of landlords in Metropolitan Toronto who had advertised available apartments. He found that one third of landlords surveyed stated that they would not rent to people on welfare. In a survey of corporations owning or managing large numbers of rental apartments, Professor Hulchanski found that 56% of the affordable apartment units were operated by corporations that did not rent to people on social assistance. 70% of the corporations had income requirements that barred social assistance recipients from qualifying. In CERA/SRAC's view, these disturbing patterns would be the same, if not worse, today.

Code consistently with the recognition of housing as a human right under international law?

The Background Paper notes that the Commission has taken a number of important initiatives in recent years to promote social and economic rights such as the right to housing. It expresses a commitment "to make efforts to meet the challenges of promotion and implementation of these rights, both in general, and in relation to housing issues specifically".

Often, however, these kinds of commitments become statements of values, and do not translate into concrete challenges to the causes of homelessness, meaningful legal challenges or demands for effective remedies within the enforcement provisions of the *Code*. There is a danger, in our view, that the Commission might relegate challenges to homelessness and the systemic inequality in access to housing that causes it, to the sphere of promotion and public education alone. This submission urges the Commission not to do this, and instead, to integrate this understanding of the causes of homelessness and legal challenges to it, into its mandate to ensure that the *Code* itself is enforced.

The challenge of making sure that the right to housing is a *real* right that can be claimed under human rights legislation is not one faced by the Commission alone. This will be a critical challenge in the coming months and years confronting all advocates and equality seekers within the new human rights regime in Ontario. It is a question that is wrestled with by CERA and SRAC, and the advocacy community generally.

How do we transform the rhetoric of human dignity and security and the guarantee of adequate housing as a fundamental human right into a concrete human rights strategy that will attack the critical equality problems in housing in Ontario? What would an effective and serious litigation and public education strategy look like that truly interprets and applies the *Code* and the Commission's mandate under it consistently with the recognition that denying disadvantaged groups access to adequate housing violates their essential right to dignity and equality? Can we move the right to housing from rhetoric to a new human rights practice in Ontario?

At times, the Background and Consultation Paper seem to suggest that the most critical and urgent inequalities in access to housing in Ontario, insofar as they are linked to poverty, inadequate social assistance, cut-backs to social housing programs, low-income and inadequate government programs, may be beyond the scope of the *Code*. Indeed, the Commission has dismissed claims on this basis that tried to address some of these issues as *Code* violations. We want to state unequivocally that we believe such claims are completely within the scope of the *Code* and that we can no longer accept the idea that somehow the most egregious violations of equality and dignity with respect to the occupancy of accommodation (such as homelessness) or the interests of the most

disadvantaged individuals and groups, are somehow beyond the scope of the *Code*. The challenge we wish to put before the Commission and ourselves is to reverse the discriminatory effect of assumptions that the biggest inequalities and most egregious human rights violations in housing can be ignored, as if they are social policy problems or economic problems rather than human rights problems, subject to being challenged within a human rights framework, and being remedied within a human rights framework.

The idea that the *Code*, restricted as it is to the protection of the right to equality in housing, and not including any specific mention of the right to adequate housing, can be interpreted and applied so as to challenge and remedy homeless in Ontario may seem a radical "stretch" of the purpose and intent of the legislation. We argue the opposite. Excluding issues of homelessness and the most systemic inequalities in housing from the scope of the *Code* thwarts the purposes of the *Code* and denies the most disadvantaged groups the benefit of its protection.

The crisis of homelessness and inadequate housing in Ontario is a crisis of inequality and discrimination – one of the most serious and widespread that has perhaps ever occurred. Actions by governments or private actors, as well as failures to act in response to new and pressing needs of disadvantaged groups during a time of unprecedented economic growth have resulted in a number of disadvantaged groups being denied access to adequate housing. These kinds of actions and inactions all fall within the *Code's* definition of violations of the right to equality with respect to the occupancy of accommodation. They can be addressed and remedied through a consistent and coherent application of the *Code*. Such a claim is only "radical" in the sense that it takes us back to the root, the foundation, of what the *Code* is supposed to achieve.

Key Principles in a Human Rights Strategy to End Homelessness

The CERA/SRAC responses to the issues raised in the Consultation Paper will identify a number of key features of a human rights strategy to address and remedy growing systemic inequalities in access to housing, which lead to homelessness, inadequate housing, hunger and social exclusion. These principles, we submit, are consistent with and flow from the explicit provisions of the *Code* and the jurisprudence of the Supreme Court of Canada.

1) Recognition of Adequate Housing as a Fundamental Human Right is a key "Value and Principle" of International Human Rights Law

The Commission recognizes that the Supreme Court of Canada has established that in interpreting the scope and application of the *Code* and in exercising its administrative discretion, the Commission must ensure consistency not only with the *Canadian Charter of Rights and Freedoms*, but also with the basic "values and principles" of international human rights law.

In CERA/SRAC's submission, the notion of "values and principles" is a robust notion, which includes the recognition of a positive duty on governments, tribunals and administrative agents to act to protect and ensure the right of disadvantaged groups to adequate housing.

As will be developed below, the Supreme Court of Canada has interpreted the values and principles that are fundamental to Canadian society to include social and economic rights under the *International Covenant on Economic Social and Cultural Rights*[5], and the obligations of governments and decision-makers to take measures to protect vulnerable groups from being denied these rights.

2) Section Two of the *Code* Guarantees, *inter alia*, the Equal Enjoyment of the Right to Adequate Housing

It is appropriate and necessary, for consistency with international human rights values and principles, to interpret section 2 of the *Code*, in conjunction with other applicable provisions, as guaranteeing not only the right to non-discriminatory treatment in applying for and living in housing, but also more substantively, as a right to the equal enjoyment of the right to adequate housing without discrimination on the listed grounds.

All aspects of the *Code's* protections in housing must, therefore, be interpreted and applied in light of the recognition that housing is a human right. Accordingly, the assessment of what constitutes a "reasonable business practice" will be different than if housing were not a fundamental right. The assessment of the extent of positive duties on various actors (governments, tribunals, housing providers) to address issues such as those identified in the Background Paper that result in particular groups being denied access to housing, such as inadequate social assistance rates, inadequate minimum wage, lack of access to housing allowances, cut-backs to social housing, exclusionary allocation of subsidized units) must be assessed in relation to the fact that denying groups access to housing violates a fundamental human right.

3) While Amendments to the *Code* to Prohibit Discrimination Because of Social Condition and to Include Social and Economic Rights Would be Desirable, They are not Necessary to Applying the *Code* to Ensure the Equal Enjoyment of the Right to Adequate Housing

Because of the close connection between poverty and membership in *Code* protected groups in housing, as demonstrated by extensive evidence presented

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[5] *International Covenant on Economic Social and Cultural Rights,* UN General Assembly resolution 2200A (XXI) of 16 December 1966 [hereinafter *ICESCR*].

in *Kearney* v. *Bramalea*[6] and other income criteria cases, there is no policy or practice that is discriminatory against the poor in housing or that denies the poor access to adequate housing, which is not contrary to the *Code* as it is currently written.

Ontario was, to our knowledge, the first jurisdiction in the world to acknowledge, in these cases, that discrimination because of poverty is a form of discrimination against women, single mothers, newcomers, racialized minorities, youth, etc. The implications of these decisions are significant for the development of a human rights in housing strategy.

In the absence of any amendments to the *Code*, the Commission is in a position to take cases forward challenging any systemic factors or failure to accommodate needs related to poverty, on the basis that such measures effectively deny *Code* protected groups such as social assistance recipients, women and people with disabilities, equal enjoyment of the right to adequate housing.

4) The Right to Effective Remedies

The mandate and authority of the Commission must be interpreted in light of the right to effective remedies under domestic law to violations of any of the rights in international human rights law. Any restriction of the scope of the *Code* or limitation of the Commission's mandate that denies access to effective remedies for violations of the right to housing would place Canada in violation of its international human rights commitments. The Commission must therefore 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.

The nature of the appropriate remedy to pursue in settlement discussions or before the tribunal must be consistent with the recognition of adequate housing as a fundamental human right.

5) Consistency of Administrative Decision-Making with the *Code*

The requirements on other administrative decision-makers to consider and apply the *Code* as it applies in their areas of jurisdiction, firmly established by the Supreme Court of Canada in the *Tranchemontagne*[7] decision, creates a new and important training, promotional and litigation mandate for the Commission.

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[6] *Shelter Corp. v. Ontario (Human Rights Comm.) (No. 2) (sub nom. Kearney v. Bramalea Ltd. (No. 2))* (1998), 34 C.HR.R. D/1 (Ont. Bd.Inq.) [hereinafter Kearney].

[7] *Tranchemontagne v. Ontario (Dir., Disability Support Program)* (2006), 56 C.H.R.R D/1, 2006 SCC 14 [hereinafter *Tranchemontagne*].

Administrative decision-making must be both consistent with the *Code* and with the values and principles of international human rights law, including the right to adequate housing. The legal obligations that attach to the *Code* and international human rights law are virtually inseparable. It will be of critical importance for the Commission to ensure that all administrative decision-making accords due recognition to the right of *Code* protected groups to the equal enjoyment of the right to adequate housing.

6) The Right to Equality in Housing Places Obligations on a Multiplicity of Actors – Not Just Landlords

CERA has had a number of complaints dismissed in the past where respondents have not been landlords, as the Commission has interpreted the right to equality in the occupancy of accommodation as placing obligations only on housing providers.

The substantive right to the equality in housing, however, places obligations on a myriad of actors – whose action or inaction may determine whether *Code* protected groups actually experience equality in the occupancy of accommodation. For example, the availability of support services for people with disabilities may be the responsibility of another agency other than the housing provider. Ensuring adequate housing allowances for people on social assistance or providing assistance covering last month's rent deposit so as not to deny social assistance recipients access to rental housing is a governmental responsibility.

A substantive approach to equality in housing must recognize diverse obligations on a variety of actors, and create a "culture of human rights", which ensures that everyone acts in accordance with the recognition of the right to the equal enjoyment of the right to adequate housing.

7) Reasonable Positive Measures to Ensure Equal Access to Adequate Housing are Required for All Protected Groups, Pursuant To Section 11 of the *Code*

Under international law, and in jurisdictions such as South Africa where the right to adequate housing is explicitly protected as a constitutional right, a standard of reasonableness has been adopted for review of government decisions with respect to resource allocation and program design impacting on the enjoyment of this right.

Similarly, the Supreme Court of Canada has found that a reasonable exercise of decision-making authority in Canada must be consistent with international human rights values, such as the right to work or the right to housing[8].

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[8] *Slaight Communications Inc*. v. *Davidson*, [1989] 1 SCR 1038, at 1056-7; *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paras. 69-71. See development

Section 11 of the *Code* establishes a standard of reasonableness that conforms with international and constitutional standards for positive obligations to ensure equality and the protection of vulnerable groups' access to adequate housing. The requirements of positive measures to accommodate the needs of *Code* protected groups ought to be applied rigorously to remedy factors that lead to the exclusion of members of these groups from adequate housing.

8) Section 21(3) and O.Reg 290/98 Should Not Be Interpreted or Applied so as to Permit Discrimination Contrary to the *Code*

Section 21(3) of the *Code* permits the use of income information, credit checks, credit references, rental history, guarantees or other similar business practices **"in the manner prescribed under this Act".** CERA was engaged in lengthy hearings and legislative debate about the meaning of this provision, raising concerns that it would permit the discriminatory use of this information. The Government repeatedly argued that it had no intention of permitting the discriminatory use of income information, noting that the provision was clear in stating that such information had to be used "in a manner prescribed under this Act – i.e., in a non-discriminatory manner. Government representatives stated that the Government simply wanted to ensure that non-discriminatory uses of this information were permitted.

The wording of section 21(3) and O. Reg 290/98 has led some to believe that minimum income criteria and other policies found by tribunals to be discriminatory are now permitted as long as they are used in combination with the other practices. This is an incorrect reading of the section, and is at odds with the stated legislative intent. In CERA's view, all of the practices enumerated in section 21 can be used in discriminatory and non-discriminatory ways. Section 21 and O. Reg 290/98 permit only non-discriminatory uses, and it is up to tribunals to determine what is discriminatory and therefore prohibited.

The Commission has opposed CERA's interpretation of section 21(3) at human rights tribunals. The Commission has argued that minimum income criteria that are discriminatory against protected groups may still be used as long as they are used in combination with the other practices. Tribunals have consistently found in favour of CERA's claimants in these cases and rejected the Commission's defence of discriminatory practices, and yet the Commission has not altered its position.

CERA and SRAC submit that it is essential for the Commission to argue for an interpretation of section 21(3) and O. Reg 290/98 which prohibits any

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of this point under "The Commission's Mandate to Protect and Enforce Social and Economic Rights" below.

discriminatory use of income information, credit, landlord references, deposits or other practices.

9) Dual Role of Social Housing

In CERA/SRAC's submissions, it is necessary to understand the role of social housing and the obligations of social housing providers in relation to the *Code* along two critical axes.

First, social housing providers must comply with the *Code* in the same way as private sector landlords. They cannot be exempted from *Code* provisions or held to a lesser standard simply because they are providing a social good.

The second equality axis is the substantive equality dimension, where 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.

10) Equality and Dignity Implies Participatory Rights

Inequality and discrimination in housing invariably involves the most disadvantaged and powerless members of society. For the Commission to fulfill its new and important mandate under the reformed human rights process in Ontario, it must benefit from and support the new voice that has been accorded to right claimants. Obviously, the Commission is appreciative of this new dimension in the reform, as it has itself advocated for the removal of the Commission's gatekeeping powers.

In our view, the new role of the Commission will be significantly enhanced by new partnerships with rights claiming constituencies, some of which will emerge in new ways now that they have access to adjudication of their claims. CERA and SRAC look forward to working collaboratively with the Commission under the reformed system, to ensure that it results in enhanced voice and meaningful access to the system for those who have been too long excluded.

CERA and SRAC offer the following responses to the issues raised in the Commission's Consultation Paper.

II. HOMELESSNESS AND ECONOMIC AND SOCIAL RIGHTS

(a) What steps, if any, do you think the government or others should be taking to address issues of discrimination related to socio-economic status, poverty and homelessness?

(b) What role can the Commission play in protecting and promoting social and economic rights and responding to homelessness?

The Commission's Mandate to Protect and Enforce Social and Economic Rights

1) Addressing Identified Violations of International Human Rights Bodies

Poverty and homelessness in Canada affecting the most vulnerable groups has triggered an unprecedented level of concern among international human rights bodies. Reviews by UN human rights bodies over the last 14 years has led to serious concerns about grave human rights violations within a country which prides itself on respect for human rights. While homelessness in Canada may not compare to that in impoverished countries, under international law, as under the *Code*, positive measures required to address human rights violations are assessed in relation to available resources. The reason for the growing concern about violations of the right to housing in Canada is that in Canada, these violations have been the result of deliberate actions by governments, such as cut-backs to social assistance and social housing, of refusals to take any appropriate measures to address the problem, and of failures by many institutions, including human rights commissions, to address homelessness as a violation of human rights.

In three consecutive periodic reviews of Canada before the UN Committee on Economic, Social and Cultural Rights (CESCR), the Committee has raised grave concerns about the continued growth of homelessness in so affluent a country. The Committee has emphasized not only the extent of the violations of the right to housing in Canada, but also the discriminatory dimension of homelessness – that it disproportionately affects disadvantaged groups such as women escaping violence, single mothers, youth, people with disabilities, and racialized minorities. The following concerns and recommendations from the CESCR's most recent review[9] show clearly that the Committee has identified the critical link between violations of the right to housing and the unique circumstances of *Code* protected groups:

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[9]See, Concluding Observations of the Committee on Economic, Social and Cultural Rights, E/C.12/CAN/CO/5/ (2006); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, U.N. Doc. E/C.12/1/Add.31 (1998).

(i) *Concerns*

"… low-income families, single-mother-led families and Aboriginal and African-Canadian families, are over-represented in families whose children are relinquished to foster care. The Committee is also concerned that women continue to be forced to relinquish their children into foster care because of inadequate housing.

… women are prevented from leaving abusive relationships due to the lack of affordable housing and inadequate assistance.

… that shelter allowances and social assistance rates continue to fall far below average rental costs, and that waiting lists for subsidized housing remain very long, for example in Hamilton and Montreal.

... many evictions occur on account of minimal arrears of rent, without due consideration of the State party's obligations under the Covenant."

(ii) *Recommendations*

"... establish social assistance at levels which ensure the realization of an adequate standard of living for all.

... give special attention to the difficulties faced by homeless girls … and take all necessary measures to provide them with adequate housing and social and health services.

... 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.

... address homelessness and inadequate housing as a national emergency by reinstating or increasing, where necessary, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, and providing adequate support services for persons with disabilities.

... implement a national strategy for the reduction of homelessness that includes measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures,

> and transparent accountability mechanisms, in keeping with Covenant standards.
>
> ... before forced evictions are carried out, the State party take appropriate measures, legislative or otherwise, to ensure that those affected by forced evictions are provided with alternative accommodation and thus do not face homelessness."

Similar comments and concerns have emerged from reviews of Canada before other UN human rights bodies. The Committee on the Rights of the Child, at its last review of Canada[10], noted that it "shared the concern of the CESCR" about the extent of homelessness, noting that it had reached the point of what had been described as a "national disaster". Similarly, the Committee on the Elimination of Discrimination Against Women commented that:

> The Committee, although recognizing the efforts undertaken by the State party concerning the provision of social housing, is concerned that such efforts might be inadequate to address the needs of women with low incomes and those of female single parents.
>
> The Committee recommends that the State party reconsider and, if necessary, redesign its efforts towards socially assisted housing after a gender-based impact analysis for vulnerable groups of women.[11]

The UN Human Rights Committee (HRC)[12], in its review of Canada in 1999 for compliance with the ICCPR, emphasized the discriminatory impacts of social program cuts on women and established for the first time in its jurisprudence that to comply with the obligation to protect the right to life, governments in Canada must take positive measures to address the crisis of homelessness. More recently, in its 2006 review of Canada, the HRC responded to evidence of people with mental disabilities being detained in institutions because of lack of supportive housing, recommending that governments "ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention."[13] The HRC also noted the adverse effect that severe social assistance cuts had had on

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

[11]Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Canada, U.N. Doc. A/58/38 (Part I) (2003) at par. 383-384.

[12]Concluding Observations of the Human Rights Committee, Canada, U.N. Doc. CCPR/C/79/Add.105 (1999).

[13]ibid. at par. 17

a number of groups such as women and children, as well as on Aboriginal people and Afro-Canadians.[14]

Under international law, human rights institutions are expected to play an important role in protecting all human rights, including economic, social and cultural rights. While these obligations have been articulated in terms of "national" human rights institutions, it is clear that in a federal state such as Canada, the requirements of national institutions also apply to provincial and territorial human rights institutions. The *Paris Principles*, endorsed by the United Nations Human Rights Commission and the General Assembly[15], (with the support of Canada) provide that a national human rights institution shall have "as broad a mandate as possible" with particular responsibility "to promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation."[16]

The obligation of human rights institutions with respect to ESC rights has been further developed by the CESCR in its *General Comment No. 10*. [17] The Committee noted that human rights institutions "have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights." In the Committee's view it "is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions."[18] *General Comment No. 10* outlines a number of important roles for human rights institutions with respect to social and economic rights. These include: reviewing legislation and administrative practice for compliance with social and economic rights; promoting public education and information programs; investigating complaints of violations; and holding inquiries into the realization of social and economic rights more generally, or within particular vulnerable constituencies.[19]

It is important, in this context, to recognize that a primary obligation under the *ICESCR* and other human rights treaties is to provide for effective domestic remedies, including through human rights legislation. In its *General Comment*

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[14]ibid. at par. 24

[15]*National Institutions for the Promotion and Protection of Human Rights*, GA Res. 48.134, UN GAOR, 48th Sess., 8th Plenary Mtg, UN Doc. A/RES/48/134 (20 December 1993); *National Institutions for the Promotion and Protection of Human Rights*, Res. 1994/54, UN HRC, 56th Meeting, UN Doc. E/CN.4/RES/1994/54 (4 March 1994) [hereinafter *Paris Principles*].

[16]ibid. at paragraphs 2 and 3(b).

[17]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, 16 November - 4 December 1998 E/C.12/1998/25 [hereinafter *General Comment No. 10*].

[18]ibid. at par. 3

[19]ibid.

No. 9[20] on the domestic application of the ICESCR, the CESCR established that state parties to the *ICESCR* are required to provide for effective domestic remedies for economic, social and cultural rights. Remedies may be judicial or administrative, but they must, in either case, be effective. The Committee emphasizes that it is well established in international law and fundamental to the principle of the rule of law that courts and tribunals must interpret and apply domestic law in a manner that is consistent with a state's international human rights obligations. This is particularly true of the interpretation and application of non-discrimination and equality rights, which, as Shelagh Day and Gwen Brodsky have argued, form an effective bridge between civil rights and social and economic rights.[21] As *General Comment No. 9* explains:

> Thus, when a domestic decision maker is faced with a choice between an interpretation of domestic law that would place the state in breach of the Covenant and one that would enable the State to comply with the Covenant, international law requires the choice of the latter. Guarantees 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.[22]

Under Canadian law, of course, international law can not be directly enforced without domestic implementation. The Commission is a creature of domestic statute and not of international law. As noted in the Background Paper, the Commission must interpret and apply the *Code* and exercise its discretion, in so far as possible, so as to conform with international human rights obligations, yet the Background Paper assumes that such an interpretation, because of the limitations to the *Code's* framework as a non-discrimination or equality statute, would still not extend the Commission's mandate to address the right to adequate housing *per se*.

In CERA/SRAC's submission, there is no meaningful dividing line between the substantive equality framework that is contained in the *Code*, and the recognition of the right to adequate housing under international human rights law. If the *Code* contained an explicit provision guaranteeing the right to adequate housing, then rights claims and litigation strategy would be different. But while the different framework of a document of social and economic rights and a document

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[20] 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, 16 November - 4 December 1998, E/C.12/1998/24 [hereinafter *General Comment No. 9].*

[21] For an elaboration of the argument that equality rights provide the bridge between civil and political and economic and social rights, see Day & Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs supra* note 20 at 48.

[22] *General Comment No. 9 supra,* note 20 at par.15.

of substantive equality rights in housing will change the way in which litigation is framed and arguments made, the outcome can be the same result, in accordance with international human rights obligations – the provision of effective remedies to violations of the right to adequate housing affecting vulnerable groups. The *Paris Principles*, the provisions of binding international human rights treaties and the jurisprudence of Committees are of legal significance in Canada once they are used to contour the way the *Code* is interpreted and applied and how the Commission can and should exercise discretion and pursue its statutory mandate. International human rights law does not so much "expand" the scope of human rights legislation, but, as has been argued with respect to the *Canadian Charter of Rights and Freedoms*[23], it focuses the scope on the underlying values and purposes of the *Code* and ensures that the individuals and groups that the *Code* is designed to protect, those who face systemic disadvantage and social exclusion, become the central claimants of the rights under the *Code*.

2) The Right to Adequate Housing as a "Value" or "Principle"

The Background Paper correctly notes that the jurisprudence of the Supreme Court of Canada, particularly in the *Baker* case, makes it clear that the *Code* and the exercise of the Commission's authority and discretion must be consistent with the "values and principles" of international law. While the notion of "values and principles" may sound like very "soft law", it is important to recognize that the implications of this approach are quite significant in relation to assessing the place of the right to adequate housing under the *Code*.

The Supreme Court affirmed in *Slaight Communications Inc. v. Davidson*[24] that "the fact that a value has the status of an international human right, either in customary international law or under a treaty to which Canada is a State Party, should generally be indicative of a high degree of importance attached to that objective".[25] In that case, the Court was considering the status of the right to work under the *ICESCR* in the exercise of administrative discretion to determine an appropriate remedy in a labour arbitration. The Court concluded that the recognition of the right to work, as a "value", "is consistent with the importance that this Court has placed on the protection of employees as a vulnerable group in society". The requirement of exercise of administrative discretion consistent with rights under the *ICESCR* was established by way of the requirement of *Charter* consistency, recognizing that the *Charter*, in turn, "should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified".[26]

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[23]*Canadian Charter of Rights and Freedoms*, Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11 [hereinafter *Charter*].

[24]*Slaight Communications Inc., supra,* note 8.

[25] ibid at 1056-7.

[26] ibid.

Subsequently, in the *Baker*[27] case (described in the Background Paper), the Court did not have a *Charter* claim before it, and was asked to consider the direct application of international human rights law to the exercise of discretion conferred by statute. The majority of the Court found that an immigration officer is required to exercise discretion consistently with the values and principles of international human rights law, even without a *Charter* claim being advanced. In that case the "values and principles" subsumed the requirement under the CRC that the interests of children ought to receive due consideration in the humanitarian and compassionate review of a deportation order by an immigration officer. A minority in *Baker* was concerned about the implications of giving legal effect to unincorporated human rights treaties, and insisted that the intermediary link to *Charter* rights and values, as had been made in *Slaight Communications*, ought still to have been required. What is important to recognize, however, is that by either route – by reference to *Charter* values as being largely equivalent to international human rights values, or by direct reference to international human rights values – the right to adequate housing under international law is itself a value which must inform the interpretation of the *Code* and the exercise of discretion, particularly in relation to the *Code's* protections of dignity and equality of vulnerable groups.

The constructive interplay between substantive equality and the right to adequate housing as a guiding principle is strengthened by the implicit equality framework that has been adopted at the international level as well as in domestic jurisdictions, with respect to the enforcement of the right to adequate housing. Many UN treaty monitoring bodies are mandated to focus on the rights of particular disadvantaged groups to the equal enjoyment of fundamental rights including housing, including racialized groups, women, people with disabilities and children. The provisions of these treaties and the jurisprudence emanating from them is clearly applicable to the *Code*. But even under the *ICESCR*, where the focus is economic, social and cultural rights in general, an equality framework is critical to the Covenant itself, to the understanding of governmental obligations and to the way in which domestic legal remedies should be provided. Virtually all of the concerns and recommendations listed above from UN human rights treaty monitoring bodies identify discriminatory exclusions of *Code* protected groups from adequate accommodation. The recommendations for government action to address these are well within the remedial authority of human rights tribunals to order appropriate remedies to violations of the rights of disadvantaged groups to equal treatment with respect to the occupancy of accommodation.

Failure to Design Inclusively and Accommodate Needs

(c) What types of inclusive design and accommodation of Code-related needs are necessary to allow all tenants to access rental housing on an equal basis?

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[27] *supra* note 8.

(d) What are some of the challenges in designing inclusively and accommodating all tenants and potential tenants?

In the Commission's Consultation Paper, it is recognized that inclusive housing and housing program design is a critical dimension of a substantive approach to equality rights in housing. While one dimension of such design relates to the accommodation of disabilities in built design, there are many other aspects of inclusive design and positive measures to accommodate the needs of protected groups or to remove barriers which act as headwinds to equal access to adequate housing.

A key aspect to emerging housing rights jurisprudence in other jurisdictions is the application of the principle of equality and inclusivity as a standard against which to review government programs and responses to disadvantage, even where adequate resources have been allocated to the program. In the leading case of *Grootboom*[28] in South Africa, where the right to adequate housing is constitutionally protected, a housing program was found to be inconsistent with the obligations of governments with respect to the right to housing not because the government had failed to allocate resources to housing, but rather, because the program as designed and implemented failed to address the critical needs of those in desperate situations. The standard applied in that case was similar to that applied by the Supreme Court of Canada in the well known *Eldridge*[29] case, where the failure to provide health services in a manner which was fully inclusive of deaf and hard of hearing communities was found to violate section 15 of the *Charter*.

As will be demonstrated below, existing jurisprudence in housing under the *Code* gives the Commission ample authority to challenge policies and practices that result in the social exclusion, homelessness and marginalization of impoverished groups. The principles enunciated in the Commission's Policy and Guidelines on Disability and the Duty to Accommodate[30] can be applied to all of the other groups protected from discrimination in housing.

Issues that ought to be examined from the standpoint of inclusive design should include not only those which we discuss in relation to disability in section 6 (below) but also program design features that result in the exclusion of disadvantaged groups such as the effect of the switch to an exclusively chronological based allocation of social housing (affecting youth, newcomers and those in immediate need), the failure to provide shelter allowances or emergency

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[28]*Government of the Republic of South Africa* v. *Grootboom*, (2000), [2001] 1 S. Afr. L. R. 46 (CC) [hereinafter *Grootboom*].

[29]*Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 [hereinafter *Eldridge*].

[30]Ontario Human Rights Commission, *Policy and Guidelines On Disability And The Duty To Accommodate*, (November 23, 2000).

assistance to those at high risk of homeless, failure provide emergency assistance or alternative accommodation to those at risk of eviction because of unforeseen circumstances.

III. RAISING PUBLIC AWARENESS AND ADDRESSING DISCRIMINATION

(a) What can the Commission do to raise public awareness about human rights issues in rental housing and to more effectively combat discrimination in this area? What role do others have in this regard?

(b) What can be done to promote better access to resolution of human rights issues in housing?

1) Lack of Awareness and Action in Relation to Discrimination in Housing Represents a Serious Crisis in the Rule of Law

Discrimination in housing is a widespread but frequently hidden problem in the rental-housing sector. Though it can have a devastating impact on some of the most vulnerable members of our communities, it represents, as the Commission notes in its Background Paper, only 4% of complaints filed with the Commission. The relatively few number of complaints filed in housing represents a major crisis in public awareness, access to justice and the rule of law.

There is at least as much discrimination occurring in Ontario in housing as in employment. Turnover in rental apartments is greater than in employment. About 28% of apartments are rented to a new tenant every year. Mobility changes, however, with household characteristics. 31% of low-income households (below LICO's) move per year compared to 27% of higher income households (above LICO's). Surveys have indicated that the majority of landlords violate the *Code* when they select tenants – particularly low-income tenants.[31] In 1993, Professor David Hulchanski conducted a survey of landlords in Metropolitan Toronto who had advertised available apartments. He found that one third of landlords surveyed stated that they would not rent to people on welfare. In a survey of corporations owning or managing large numbers of rental apartments, Professor Hulchanski found that 56% of the affordable apartment units were operated by corporations that did not rent to people on social assistance. 70% of the corporations had income requirements that barred social

[31] David Hulchanski, Discrimination: Routine Exclusion of Welfare Recipients in Toronto (Toronto, 1992) available online at:http://action.web.ca/home/housing/resources.Shtml?x=67 199&AA _EX _ Session= 6c90c199fa2156857 1fc2416a079f9bb; Centre for Equality Rights in Accommodation Human Rights, *Access and Equity: CERA's recommendations for the Homelessness Action Task Force* (November, 1998) http://www.equalityrights.org/cera/docs/golden.htm

assistance recipients from qualifying. In CERA/SRAC's view, these disturbing patterns would be the same, if not worse, today.

When CERA informs individuals protected under the *Code* from discrimination in housing of what constitutes discrimination, they respond that discrimination – whether intentional or by "accident" – in policy or practice is the norm when they are searching for housing. Often, a housing search for a single mother on social assistance is simply a search for a landlord or property manager willing to rent to her. Colleagues working within housing help centres, immigrant settlement organizations, women's shelters, emergency shelters and other community organizations frequently describe to us the widespread discrimination their clients experience.

The low numbers of human rights complaints filed in housing can be attributed to lack of awareness of *Code* protections, the characteristics (disenfranchisement and vulnerability) of the communities experiencing housing-based discrimination, the lack of funding for specialized advocacy services to represent claimants, and the often subtle nature of the discrimination itself. Victims of discrimination in housing frequently do not have the supports to file a complaint or navigate the formal complaint process, as housing, settlement and shelter workers, etc., are often overburdened. Individuals experiencing housing discrimination often require immediate intervention on their behalf while an apartment is still available. As well, many discriminatory tenant selection practices (e.g. income criteria or credit, reference of employment requirements that exclude young people or newcomers) are not forms of discrimination that are readily recognized by tenants if they have not been informed that they contravene the *Code*. Discrimination in housing is often ignored by most potential claimants, the broader public and decision or policy-makers because of lack of awareness of the *Code's* application in housing and of the remedies it could provide.

The fact that practices that are prohibited under the *Code* are the norm in the rental market has discredited the administration of justice in this area, so that many, including legal advocates, legal clinics and housing workers, are of the view that it is virtually hopeless to challenge discrimination in rental housing. Many frontline workers in women's shelters, settlement organizations, community health centres, etc. with whom CERA works – individuals who deal with discrimination every day – are unaware of how the *Code* and its protections can assist their clients in practical ways and on a daily basis.

The low number of complaints is also related to the lack of funding for advocacy resources in this area. Complaints in housing represented 8 – 10% of all complaints during the years when CERA had some funding from the provincial government to provide advocacy and representation to victims of discrimination, and in these years, the majority of complaints filed at the Commission were filed by CERA. Shortly after the election of the Harris government in 1994, all provincial funding for CERA was eliminated. While CERA has done its best to

continue to provide services in this area, the representation of individual rights claimants has been the most difficult area of work to fund.

The vast discrepancy between the number of complaints filed in housing and the documented frequency and effects of discrimination in housing is nothing short of a crisis in the rule of law. **Housing ought therefore to be given the highest priority in public education and strategic litigation at the Commission**. An appropriate goal over the next five years would be to raise the number of housing complaints to equal the number of complaints filed in employment.

2) Dialogue and Presence in Communities

A local presence in and dialogue with communities across Ontario is necessary for effective public education in this area. While the Commission may not have the resources to regularly send staff across the province in order to conduct trainings in human rights in housing and learn of local issues, developing strong working relationships with local community organizations could be equally effective. The Commission should develop a human rights training guide and sample workshop materials that organizations can use to conduct human rights workshops. It should develop relationships with key organizations in different communities to work collaboratively on public education initiatives, to ensure that the materials are effective, and to learn of local issues that need to be addressed either in policy or through strategic litigation.

3) Advertisements/Service Announcements

The Commission should also devote some resources to advertisements/public service announcements in both mainstream and community media. Advertisements in the "for rent" sections of newspapers or rental housing-specific publications such as the *Renters News* could be extremely effective, as would multilingual advertisements and announcements in ethno-specific newspapers and on community radio. Advertisements in high traffic areas such as public transit shelters or malls would be, in CERA's view, well worth the investment. Community partnerships developed by the Commission could be used to expand the reach of the advertisements. For example, the Commission could distribute posters and flyers to local organizations for distribution in laundromats, community centres, YMCA/YWCA's, shelters, libraries, etc.

4) Research on Discrimination in Housing

Research on the incidence, nature and effects of violations of human rights in housing is another critical tool in raising awareness of *Code* provisions and protections related to rental housing. While there is some qualitative research related to housing-based discrimination in Canada, there is a great need for

quantitative studies.[32] The Commission could partner with community organizations, such as CERA, to develop and conduct "paired testing" or similar studies to track the extent of discrimination in the rental housing sector in communities across Ontario. Over the past few years, CERA has worked with the Ryerson University School of Urban and Regional Planning to assist students in conducting small-scale telephone-based discrimination audits. The results suggest that a well-controlled and rigorous study could send a powerful message to politicians, policy-makers and the general public about the prevalence and devastating impact of housing discrimination in Ontario.

Human Rights Remedies in Alternative Forums

1) Promoting Human Rights Remedies Outside of the Formal Complaint Process

For improved resolution of human rights issues in housing, it is important to promote human rights remedies in forums other than the Human Rights Tribunal of Ontario.

At CERA we have found that it is often possible to reach a remedy for a human rights and housing case outside of the formal complaint process, through careful negotiation between landlords and tenants. In these cases, the threat of a formal human rights complaint can be the impetus for a settlement outside of the system. Under the new human rights process, with direct access to a tribunal, it will be particularly important to ensure that the Legal Support Centre, as well as potential community partners with the ability to negotiate promptly and vet cases are adequately resourced in order to ensure that the Tribunal is not swamped by cases that could easily be resolved elsewhere.

In the systemic discrimination cases that CERA deals with, there is an important role for the Commission to play in assisting with negotiations outside of the formal complaint process. The Commission is well placed to play an active role in bringing together different parties to an issue such as non-governmental organizations and government departments and agencies. Such negotiations could result in settlements that would have a broader impact and effect. The Commission's participation would lend credibility to these types of negotiations and may obviate the need to litigate the issue.

Through its public education function, the Commission could also assist housing providers to better understand their obligations under the *Code*. This could result in a greater number of landlords and property managers self-regulating their policies and practices by using the *Code* in their "business" practices.

[32]Novac, S. et al (2002), *Housing Discrimination in Canada: The State of the Knowledge.* (Ottawa: Canada Mortgage and Housing Corporation).

IV. AFFORDABLE HOUSING

(a) What can the Commission do to support the goal of adequate and affordable housing for persons who experience hardship, disadvantage or discrimination because of *Code* grounds?

(b) There appear to be issues with regard to social housing and co-op housing that need further consideration from a human rights perspective. What do you think these issues are? Are there examples of discrimination in the social housing or co-op housing contexts that the Commission could address? What challenges do housing providers face that the Commission can assist with?

Discrimination and Affordability

It is often not adequately appreciated how costly discrimination is to disadvantaged groups in housing. What is most shocking about the apartments that members of *Code* protected groups are forced to rent is not just that they are inadequate and badly maintained, but also that they are drastically overpriced. A newcomer with children, with no credit or reference, 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.

In preparing a study for the Toronto Mayor's Homelessness Task Force, CERA retained Professor Michael Ornstein, a leading Canadian expert in the statistical analysis of the effects of discrimination in housing. He conducted research, based on census data, on how much new renters were paying for an apartment in the year of the census. What is most alarming about the data provided by Professor Ornstein is how unlikely a low-income household or members of particularly disadvantaged groups are to move into affordable housing. One would expect, of course, that low-income households would rent the lowest rent apartments. The opposite is true. Low-income households generally are forced to rent the most expensive apartments – getting low quality and high price. The study showed that 74% of single mothers with two children living in poverty who moved in a given year rented apartments that were above the affordable third of apartments (by size) and more than half rented apartments that were in the most expensive third. 85% of couples with two children were above the affordable

third. Only 13% of couples with one child relying on government transfer payments who moved were able to rent affordable apartments.[33]

When low-income people do manage to find more affordable units, they are likely to remain there for a long period of time. However, when low-income families enter the rental market as movers or as first time renters, and a third of them each year are forced to do just that, they face a very difficult and exclusionary market and are frequently forced into the most expensive units.

Other Measures to Address Affordability

As noted above, the oft-heard refrain that homelessness is purely a result of a shortage of housing has often served only to divert attention from important systemic barriers and failures to accommodate needs of *Code* protected groups. Supply side approaches are an important component of strategies to address the needs of disadvantaged groups in housing, but are by no means the only or even the most significant initiatives required.

From the perspective of the Commission's mandate to promote and protect equality values and inclusiveness in housing, there are alternative approaches to addressing the affordability crisis that have been shown to be more effective in addressing the crisis facing the most disadvantaged groups in housing.

One solution that has proven effective is a portable shelter subsidy that is tied to need rather than to designated units and a chronological waiting list. Needs based allocation, though administratively more difficult, more accurately targets those in the greatest need and avoids the discriminatory exclusions of youth, newcomers and others that are endemic to a chronological system. Housing only those households who can remain on a waiting list for a number of years has a "creaming effect", which eliminates many of those who are at the highest risk of homelessness. Portable shelter allowances allow low-income households in crisis to access the most affordable housing they can find, often ensuring that they are close to family, social support networks, schools, etc., rather than wait for many years for a subsidized unit in social housing, which may not be in an appropriate location.

In the following section, we outline a number of other initiatives, which the Commission could take to improve affordability and challenge systemic barriers to adequate accommodation affecting *Code* protected groups.

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[33]Human Rights, Access and Equity: CERA's recommendations for the Homelessness Action Task Force, November 1998 (Appendix A), Available at: http://www.equalityrights.org/cera/docs/golden.htm.

Social Housing

Social housing is an essential component in the realization of the right to equality with respect to accommodation and is often the only available remedy for violations of human rights in housing experienced by the most disadvantaged groups. Whether as realization or remedy, the funding/provision, design and delivery of social housing must be informed by human rights principles and norms. In this regard, the *Code* – properly interpreted – imposes certain legal obligations on governments, social housing providers and human rights agencies. These obligations must inform the Commission's rental housing policy.

1) Obligations of Social Housing Providers to Comply with the *Code*

In recent years, a number of issues have arisen with respect to the obligations of social housing providers to comply with provisions of the *Code.* For example, during the hearings into whether minimum income criteria are prohibited under the *Code*, Cityhome intervened to argue that in order to guaranty the desired pre-determined income mix, social housing providers should be permitted to use income criteria in market rent units, since they already allocated subsidized units to low income tenants. It has frequently been argued, in fact, that policies designed to cap the number of low income tenants in social housing at a certain percentage is beneficial because it curbs the critique by higher income households that there are too many "subsidized tenants" – i.e. poor people, single mothers, newcomers, etc. – in their neighbourhoods.[34] These kinds of arguments, of course, cannot be given legitimacy under human rights legislation. One only needs to consider similar approaches to racial integration to realize that they are entirely contrary to human rights principles.

More recently, when social assistance recipients have challenged the practice in federally funded co-ops of charging social assistance recipients higher than "rent-geared-to-income" rents in subsidized units, in order for the co-op to benefit from the maximum available shelter component, many co-ops have argued that this practice is beneficial to social assistance recipients because it brings in more income for co-ops, allowing them to rent to more low income households. Again, this kind of rationalization of discriminatory treatment on the basis of the good intentions of the housing provider would set a dangerous precedent and is, moreover, contrary to the provisions of section 2 of the *Code*, which does **not** allow any "reasonable and bona fide" exemption from the prohibition of differential treatment on prohibited grounds.

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[34]In fact, the percentage of social assistance recipients, newcomers and other low income groups in "income mixed" social housing is often a lower percentage than in lower rent accommodation in the private market. The social mix that is engineered to address discriminatory reactions to social assistance recipients, newcomers, etc., thus results not only in discriminatory practices in relation to market rent units, but also in the under-representation of social assistance recipients and other disadvantaged groups in the social housing tenant population more generally.

Another critical issue that has arisen in relation to social housing providers is the exclusionary effects of lengthy waiting lists for subsidized units. The effect of this has been to dramatically distort the demographic make-up of households qualifying for subsidized units in Ontario, disadvantaging newcomers and young families and denying access to many of the households at immediate risk of homelessness. When CERA assisted a number of young families excluded from subsidized housing on this basis a number of years ago, the Commission dismissed the complaints based on the notion that all applicants are treated according to the same rules. No attempt was made to consider the systemic effect on protected groups of this major policy change (i.e.: from needs based to chronological).

In CERA/SRAC's view, it is important not to read into the *Code* any kind of implicit "social housing exemption" from prohibitions of discrimination. The idea that because social housing is a "social good" for disadvantaged groups that it should not have to meet the same standards under the *Code* as other housing providers such as private sector landlords is entirely unacceptable both from a policy and from a legal standpoint. The *Code* contains explicit provisions for justifying special programs, and if differential treatment in social housing can be justified on this basis, that is appropriate. Otherwise, permitting discriminatory treatment in social housing simply because the over-all purpose of the housing is helpful to disadvantaged groups is a dangerous precedent. This kind of rationale has never been accepted in other areas of the *Code's* provisions, and it is equally unacceptable in the area of housing.

2) Social Housing and Government Obligations to Provide Housing for Disadvantaged Groups

The OHRC's background paper recognizes that social housing "has been one of the most effective ways of providing affordable and adequate housing to Ontarians"[35]. It also notes the important role that social housing has played in providing viable housing options to individuals and families who cannot compete in the private rental housing market.

That being said, neither the Background Paper nor the consultation paper explicitly articulate the relationship between the *Code's* provisions on accommodation and the provision of social housing for those most in need.

The allocation of resources to, and the design of social housing programs, is properly subject to review under the *Code* to ensure that reasonable measures have been taken to accommodate the needs of protected groups in relation to access to adequate housing.

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[35]s*upra*, note 3 at 8.

When interpreted substantively, section 2(1) and 11 of the *Code* impose more than just an obligation on social housing providers to allocate social housing units in a non-discriminatory fashion. Under the *Code*, governments have an obligation to take positive action to accommodate needs or circumstances of protected groups, which act as barriers to accessing adequate housing. There are a number of ways that governments may meet these obligations, but an essential component of such positive measures is to ensure that those who are not able to access adequate and affordable housing in the private market, are provided with housing.

This understanding of the obligations placed on governments is consistent with the notion of substantive equality as it developed under human rights legislation in Canada, and which has been explicitly incorporated in section 11 of the *Code*. Moreover, as will be explained in the section below on social and economic rights, it is the only reading of the *Code* that is consistent with the Supreme Court's jurisprudence on equality under section 15 of the *Charter* and with international human rights law.

This means that the *Code* must be interpreted in a manner that holds governments accountable for providing sufficient resources to ensure an adequate supply of social housing for those most in need.

Governments and social housing program administrators are also obliged to ensure that social housing program design is consistent with the obligation to provide adequate and appropriate housing for those in need. Questions about whether the shift from a needs based allocation of subsidy to a lengthy chronological waiting list was appropriate, or whether it is justifiable to restrict the number of low income households in social housing communities in order to satisfy neighbourhood prejudices must be assessed not only for compliance with the *Code's* prohibition of direct discrimination, but also in light of the *Code's* requirement of reasonable measures to accommodate needs of protected groups. While social housing providers may object that such considerations subject them to a 'higher standard of scrutiny' than is applied to private sector landlords, it is important for social housing providers to realize that they are performing a critical role with respect to governmental compliance with its fundamental obligations under human rights legislation, the *Charter* and international human rights law.

3) Role of the Commission vis a vis Social Housing

The Commission's role in relation to social housing should reflect the dual aspects of the *Code's* application in this area. The Commission should both ensure that social housing providers comply with the *Code* as individual housing providers, supporting low-income claimants more than it has in the past in challenging discriminatory practices within this sector, and at the same time, hold

governments accountable in relation to the resources allocated to and the design of social housing programs.

The Commission should resist, of course, the suggestion that it's primary role with respect to promoting human rights in housing ought to be to simply allocate more funding for social housing on the grounds that more supply will eliminate the "incentive" to discriminate that exists in a tight market. Such a proposal is comparable to suggesting that the focus of the Commission's work in employment discrimination ought to be to try to promote job creation. Discriminatory patterns in housing, as in other areas, are entrenched and often result from irrational behaviour. They exist in periods of high and low vacancy alike. Social housing providers sometimes argue that if sufficient social housing was available the most marginalized would be able to access social housing and more affordable units would become available in the private market, which disadvantaged groups could then access. In fact, for many disadvantaged groups, the situation is reversed. Young families and newcomers, unable to benefit from subsidized housing, rely on the private market. Also, as Ornstein's study for the Golden Task Force shows, even when affordable units are available, low-income tenants are forced into more expensive accommodation because of discrimination.

Under international human rights law, governments have a multi-dimensional obligation to realize the right to adequate housing, conceptualized by the UN Committee on Economic, Social and Cultural Rights as an obligation to "respect, protect, facilitate and provide". This means that governments must respect the right to housing by, for example, not denying particular disadvantaged groups access to subsidized housing in a discriminatory manner, must protect the right by protecting tenants from discrimination by landlords, must facilitate the right to housing by taking measures to improve access or encourage the creation of more affordable housing. And finally, where disadvantaged groups are left homeless despite these other measures, the government has a clear obligation to take reasonable measures, to the maximum of available resources, to provide them with housing.

Cooperative Housing

While there are many benefits to residing in cooperative housing, as noted by the Commission in its Background paper, problems can also arise when member rules, by-laws and policies come into conflict with human rights law. In CERA's experience, all too often, the boards of Cooperatives insist that rules and by-laws, etc. developed by a majority of the membership through a democratic process supersede any external law, including human rights law.

Of the many calls that CERA receives from cooperative members facing issues of discrimination, the most common response to attempts to negotiate with coop management, is that no modification of rules, policies or by-laws can take place

without approval from the *majority* of the membership, even when those rules, policies, or by-laws are in clear violation of the *Code*. In CERA's experience, it is not uncommon for the membership to exhibit contempt for an individual within the coop who raises an issue of discrimination. In our experience, individual members in coops who make an allegation of discrimination against the cooperative as a whole are often isolated and ostracized from their communities because they have dared to challenge the majority.

From CERA's perspective, the failure to recognize human rights as fundamental rights and the *Code* as law that must be adhered to – despite democratically approved rules, by-laws and policies – compounds the impact of the discrimination that takes place in cooperative housing, exacerbating violations and the infringement of individual dignity.

V. OTHER LEGISLATIVE SCHEMES

(a) Are there human rights issues in rental housing raised by municipal or provincial laws, policies and practices of which the Commission should be aware?

There are a number of provincial and municipal laws and policies which impact directly on access to adequate housing for *Code* protected groups and which therefore fall squarely within the Commission's mandate for public education and litigation. Additionally, human rights issues in housing frequently arise in the adjudication of issues by other administrative tribunals. An effective public education and litigation strategy in human rights in housing must include initiatives in a broad range of legislation and decision-making, in which policy makers and decision-makers need to be made aware of governmental obligations to protect vulnerable groups and ensure access to adequate housing. The following are some of the key areas in which strategic initiatives by the Commission in consort with representative non-governmental organizations would be important.

- Minimum Wage and Protections for Part-Time Employees
- Inadequate Levels of Social Assistance
- National Child Benefit Clawback
- First/Last Month's Rent and other Assistance
- Eviction Prevention and Homelessness Supports
- Municipal Review and Enforcement Mechanisms
- Decision-Making in Other Tribunals
- Zoning By-Laws

Minimum Wage and Protections for Part-Time Employees

The crisis of poverty in Ontario is inseparable from the homelessness crisis.

Code protected groups in housing are over-represented among those relying on minimum wage, low wage and part-time work. A coherent strategy to address homelessness as a violation of the right to equality under the *Code* should 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.

The growing gap between an income earned at or near the minimum wage and the poverty line is a key factor leading to homelessness among *Code* protected groups. Working 35 hours a week at $8.00 an hour, a worker earns $280 a week, or $1,213.33 a month (before taxes). In a province where the average 2-bedroom apartment is approximately $1,000[36], and significantly higher than that in many centres, it is impossible to make ends meet earning the minimum wage.

In 1976, the minimum wage was 9.9% below the poverty line for a single person; whereas, today it is approximately 32% below the poverty line (as measured by the 2003 before-tax low income cutoffs). Approximately two-thirds of minimum wage workers are women, and a disproportionate number are workers of colour.[37]

Many people come to Canada with valuable skills and training, but because of racism and unjustified requirements for Canadian experience, they are often forced to take insecure, poorly paid jobs. Approximately 40% of recent immigrants make poverty wages while about 30% of people of colour in Ontario earn poverty wages.[38]

Women working in part-time employment are frequently those who are caring for children, and are in greatest need of access to a decent living wage as well as other employment benefits such as health and long term disability insurance. Saskatchewan has legislative protections for part-time workers requiring employers to provide benefits to part-time employees on a pro rated basis. Ontario has no such legislation, and the practice of employers in Ontario 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.

The Commission can play an important role in explaining and documenting the equality dimensions of policies related to vulnerable workers, noting the over-representation of *Code* protected groups such as women, and the distinctive

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[36]Canada Mortgage and Housing Corporation, *Rental Market Report: Ontario Highlights*, Spring 2007.

[37]Ontario Needs a Raise Campaign, *Minimum Wage Fact Sheet*, February 2, 2005. Accessed online at: http://www.incomesecurity.org/campaigns/documents/MinumumWageFactSheet-final.Feb22.doc.

[38]ibid.

needs of these groups in terms of income adequacy and stability. A strategic approach to employment discrimination which targets the equality violations in employment that most affect enjoyment of the right to housing, and ensuring that the housing dimensions of employment discrimination are elaborated and documented will help to forward a more integrated approach to equality claims under the *Code*, and ensure that the issues of the most disadvantaged and vulnerable workers are given a high priority in the Commission's work.

Inadequate Levels of Social Assistance

In CERA's and SRAC's position, the inadequate shelter allowance benefits for social assistance recipients set by the Provincial Government are in clear violation of Section 2 of the *Code.* A lone parent on Ontario Works with 2 children under 12 receives just $554 for housing from a total monthly benefit of $1,086.[39] In April 2007, average rents for a two bedroom apartment were $961 in Ottawa, $795 in London, $802 in Hamilton, $769 in Windsor and $1,073 in Toronto.[40]

Depending on location, shelter allowance may cover as little as half of actual rent. As the Commission notes in its Background Paper, the result is that individuals and families receiving social assistance regularly have to sacrifice other necessities such as food, telephone, school supplies, clothing, etc., in order to keep a roof over their heads, and many become homeless.

In 2003, CERA and the Advocacy Centre for Tenants Ontario (ACTO) assisted 15 social assistance recipients to file human rights complaints against the Provincial Government. The Complainants argued that setting the shelter allowance rate so far below average rents in the province results in the restriction or exclusion of Ontario Works and Ontario Disability Support Program recipients from the occupancy of accommodation. As recipients have no other means to pay the rent, we argued that the duty to accommodate the needs of social assistance recipients entrenched in section 11 of the *Code* falls squarely on the Provincial Government. The governments' deliberate refusal to accommodate the needs of households in receipt of public assistance, and other groups that are disproportionately represented among social assistance recipients, such single mothers and people with disabilities, constitutes a violation of the *Code*.

The Commission dismissed the complaints under Section 34 of the *Code*, applying a formal equality analysis in order to deny a hearing to a substantive equality claim. The Commission dismissed the complaints on the grounds that "the respondent applies the [maximum shelter allowance] formula to the complainant in the same way that it does to all other persons who receive public

[39]Ontario Ministry of Community and Social Services, *OW Policy Directives*, accessed online at: http://www.mcss.gov.on.ca/mcss/english/pillars/social/ow-directives/ow_policy_directives.htm.

[40] Canada Mortgage and Housing Corporation, *supra* note 36.

assistance pursuant to OWA", and further, that the respondent government did not provide housing accommodation to the complaints, so the complaints "cannot be said to be with respect to the occupancy of accommodation."[41]

In CERA/SRAC's view, both of these findings are clearly erroneous. Same treatment under a formula which itself denies social assistance recipients access to housing accommodation is not consistent with the requirements of the *Code* – particularly the requirements of s.11.

Further, there is nothing in the *Code* to suggest that the only parties with any obligations to accommodate the needs of protected groups in housing are housing providers. The Supreme Court of Canada made it clear in the *Eldridge* case that the issue in equality claims is the accommodation of needs, not who provides the accommodation.[42] In that case, the Court rejected the argument of the claimants that interpreter services necessary to equality in healthcare had to be provided as a component of healthcare services, leaving it up to the government to decide in what manner, and by whom, the services would be provided. In the case of shelter allowance, it is obvious that the "person responsible for accommodating those needs" as s.11 is worded, is the government rather than the housing provider.

Under the previous gatekeeper system, there was virtually nothing disadvantaged claimants such as the women who challenged inadequate shelter components could do to bring these critical issues before a tribunal. These and many other important substantive equality claims addressing the issues of the most disadvantaged groups in housing were systematically denied hearings on the basis of the Commission's adoption of a formal equality framework in housing. Now that the most disadvantaged claimants advancing substantive equality claims such as these will have access to hearings, it will be critically important to have the support of the Commission.

Clawback of the National Child Benefit Supplement

A critical issue in addressing the gap between income and housing costs in government policies is to recognize that while a wage earner supporting a family will receive the same wage as a wage earner with no dependents, the wage earner with a family will have significantly higher housing costs. An important component of governmental programs to accommodate the unique needs of families with children in housing is to provide child-related tax benefits and to address in various ways the issue of child (family) poverty. The primary initiative

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[41]Section 34 decision of the Ontario Human Rights Commission in *Candice C. Beale v. Her Majesty the Queen in right of Ontario as represented by the Minister of Community, Family and Children`s Services,* File No. JWIS-5JUR3L, March 17, 2004.

[42]*Eldridge*, *supra* note 29.

in this area is currently the National Child Benefit Supplement, introduced in 1997.

In Ontario, the National Child Benefit Supplement is clawed back from social assistance recipients by agreement with the federal government. The result is that the majority of single mothers, who are most in need of the benefit, are denied it. In a 1998 report by the National Council of Welfare entitled, *Child Benefits: Kids Are Still Hungry*, it was estimated that of the one million plus lone parent families in Canada, only 17% would keep the Supplement, as compared to 59% of two-parent families who would keep it. The rest of the lone parent families - 83% - would not benefit from the Supplement at all.[43] This exclusion, of course, has a significant impact on women's homelessness. For many low-income women, $100 could be the difference between retaining housing and being evicted for arrears in rent and rendered homeless.

Ontario families who receive social assistance have an average of $115 taken away each month per child as a result of the clawback. Most do not benefit from the reinvestment programs, which are generally not designed with them in mind. In Ontario, 80% of the money clawed back goes towards child-care supplements for working families, which social assistance recipients generally do not qualify for.[44]

The Ontario Government announced last year that it would be "phasing out" the clawback of the NCBS. However, the details that have been revealed to date suggest that the "phase out" will consist largely in a change of method but will leave social assistance recipients without any significant improvement to their income.

This issue has been identified as a critical form of discrimination against those relying on social assistance by the UN Human Rights Committee, the UN CESCR, and the Committee on the Right of the Child.[45] It is important that the Commission, too, engage with this issue, and negotiate with the government to bring policies in line with the obligations under the *Code* to accommodate the needs of families with children, including those on social assistance, in relation to increased housing costs.

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[43]National Council of Welfare (1998), *Child Benefits: The Kids are Still Hungry*, Report No. 104 (Ottawa: Minister of Public Works and Government Services Canada).

[44] Income Security Advocacy Centre, summary of Chokomolin, Lance, & Prine v. Her Majesty the Queen in Right of Canada, et al. Accessed at: http://www.incomesecurity.org/challenges/ChokomolinLancePrincev.HerMajestytheQueeninRightofCanadaetal.html.

[45]See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, U.N. Doc. E/C.12/1/Add.31 (1998) par. 22; Concluding Observations of the CESCR: Canada, U.N. Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (2006) par 11; Concluding Observations of the Committee on the Rights of the Child: Canada, U.N. Doc. CRC/C/15/Add.215 (2003) par 16; Human Rights Committee Concluding observations: Canada, U.N. Doc. CCPR/C/79/Add.105 (199) par. 18.

Last Month's Rent and other Assistance

A number of cases have come up over the years in which CERA has represented claimants who were denied access to accommodation after being unable to secure necessary assistance from social services in order to access housing. A number of cases related to securing a deposit for last month's rent.

A case from many years ago, that of Elizabeth Wiebe and family, involved a decision by social services to deny emergency assistance for a family of seven to be housed in a motel, after which they were forced to live in a garage and then to voluntarily relinquish there children into foster care. The Wiebes filed a complaint with the Commission, arguing that the discretionary provision of emergency assistance by social services should be consistent with the obligation to accommodate the needs of families with children and with the values of international human rights law, including the right to adequate housing.

The Commission dismissed the Wiebe's complaint and it has continued to dismiss any complaints over the years from social assistance recipients or low-income households, which allege that governments have obligations to accommodate their needs in relation to housing.

The human rights tribunal in *Garbett v. Fisher*[46] did find that in the absence of government provision of assistance to cover last month's rent deposit a landlord has an obligation to waive this requirement. While this is an important finding, CERA's position is that the most effective way to ensure equal access for social assistance recipients is to ensure that they are provided assistance to cover the deposit that is required of other tenants, allowing them to apply on an equal footing with other applicants.

It will be important in the coming years, as low income claimants are able to access hearings and adjudication of claims that have been dismissed by the Commission in the past, that they are supported by the Commission in advancing a substantive equality framework for the obligations of governments and others in relation to challenging and remedying systemic barriers to accessing housing.

Eviction Prevention and Homelessness Supports

[46] *Garbett v. Fisher* (1996), 25 C.H.R.R. D/379 (Ont. Bd.Inq.).

Under international law, an important governmental obligation in relation to the protection of vulnerable groups in housing is the guarantee of security of tenure and the implementation of positive measures to either prevent evictions of vulnerable groups or, if evictions are necessary, to ensure that they do not result in homelessness. Obligations toward families with dependent children in this respect are considered particularly important.

Increasing numbers of households in Ontario, however, have no statutory protections of security of tenure because of the nature of their housing situation. Lower rent accommodation that is affordable to the poorest households is often not self-contained. If kitchen or bathroom facilities are shared with the owner, rental accommodation is exempt from both the *Residential Tenancies Act*[47] and the *Code*[48]. Increasing numbers of low-income families with children are now forced in non-self-contained apartments because of the affordability issues.

Others live in small motel units that are rented by the week. These too are exempt from security of tenure provisions.[49] Even in apartments protected by security of tenure legislation, women may be forced to leave when a male partner vacates. Where the male spouse's name is on the lease or where he was the one to have paid the rent to the landlord, women have been found not to be "tenants" and therefore denied security of tenure.[50]

Tenants are routinely evicted for minimal arrears of rent. In CERA's eviction prevention program, we previously had access to important data from the rental housing tribunal through which we could assess the systemic patterns at play in evictions in Ontario. This data is now denied, but according to the data we received in 2,000, 80% of applications to evict for arrears were for less than $1,000 or an average month's rent. About 700 applications each year in Toronto were against tenants who owed nothing, but were alleged to have been "persistently late" in the past.[51]

In many cases, households were evicted when the landlord actually owed the tenant money because the arrears were less than the deposit the tenant had paid the landlord at the commencement of the tenancy to cover the last month's rent.

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[47]*Residential Tenancies Act*, S.O. 2006, c.17, s.5. [hereinafter *RTA*]

[48]*Code*, *supra* note 1 at s 21(2).

[49]*RTA, supra,* note 47.

[50]See for example *Minto Management Limited v. Torres*, (June 5, 2001) unreported, (Ontario Rental Housing Tribunal). Note: the Government of Ontario has attempted to remedy this problem in the *Residential Tenancies Act* by allowing spouses to become tenants when their partner leaves or dies (*Residential Tenancies Act*, s.3 and associated Regulations).

[51]Centre for Equality Rights in Accommodation (2002), *A Feasibility Study on Renter Insurance in Toronto's Rental Housing Market.*

In less affluent countries, poor and homeless people tend to be located in particular communities, often as squatters occupying particular tracts of land. Forced evictions of communities of homeless people from squatter communities in Ontario is not unknown, of course, but the approximately 60,000 evictions a year in Ontario are generally carried out on dispersed households. Yet these evictions derive as much from deliberate government choice as the forced evictions of squatter communities elsewhere, and subject to the same requirements under international human rights law to ensure that they do not result in homelessness. The Commission could play an important role through public education and litigation to promote a new approach to evictions in Canada that is more consistent with both the obligations under the *Code* to accommodate needs of protected groups such as families, and with the requirements of international human rights law.

The Commission should also advocate strenuously for the removal of exemptions in housing for non-self-contained dwellings, both in the *RTA* and in the *Code* itself. The correlation between membership in disadvantaged groups and reliance on shared accommodation makes these exemptions open to challenge under the *Charter*. The Commission should argue in an appropriate case before the Human Rights Tribunal that the exemptions in the *Code* for non-self-contained units and other accommodation types relied upon by disadvantaged tenants are of no force and effect because they are violations of section 15 of the *Charter*. The idea that a landlord can refuse to rent to a person of colour because they will share a bathroom or kitchen with the landlord, and that a tenant in that situation can be evicted at will, with no notice, for any reason, is repulsive to the values and principles of the *Code*, and ought to be challenged.

Where, for various reasons, households find themselves at risk of homelessness, we submit that the *Code* also imposes obligations on governments and other actors to take reasonable measures to assist members of disadvantaged groups with access to housing. Most municipalities now have homelessness prevention programs of various kinds. The Commission should take the position that these kinds of programs are in fact a requirement of the *Code*, and ensure that they are properly resourced and maintained so as to ensure that reasonable measures have been taken to address the most critical needs of disadvantaged groups in housing.

Discriminatory Zoning and "Not-in-My-Backyard"

CERA supports the recommendations made by the HomeComing Community Choice Coalition related to discriminatory municipal zoning policies, practices and by-laws.

In neighbourhoods across Ontario there are policies, by-laws and legislation that restrict – either directly or in effect – the development of housing for marginalized communities, whether group homes for individuals with mental illness, shelters

for homeless families, or subsidized and supportive housing. Frequently, these restrictions take the form of distancing requirements – i.e.: requiring shelters to be located on main streets and/or a certain minimum distance from each other. Community or neighbourhood preference around new housing developments is a primary factor in the establishment of such policies.

In CERA's experience, the "community consultation" process utilized prior to the development of shelters, group homes and supportive and affordable housing in communities is often little more than an opportunity for local residents and politicians to delay, impose unreasonable conditions on, or ultimately "sink" a development because it will bring unwanted (i.e. mentally ill and/or poor) and/or undesirable people into the neighbourhood. Residents typically feel very comfortable publicly voicing concerns about what they perceive to be the negative impact (stereotypes about increased crime, drug and alcohol abuse, etc.) of having low-income people move into their neighbourhoods. CERA has further observed the sophisticated way that residents' associations employ planners and planning lawyers to legitimize what is essentially "people-zoning".

Unfortunately, many local governments do nothing to prevent discriminatory attitudes by residents' associations, often, in fact voice prejudicial opinions themselves and frequently base decisions on them. The Commission has a large role to play in assisting municipalities to develop planning processes and community input mechanisms that are informed by human rights values and in compliance with the *Code.*

Municipal Charters: New Mechanisms to Protect Human Rights

With the downloading of housing related responsibilities from the provincial and federal governments and calls for greater funding and revenue generating powers to respond to these responsibilities, cities and towns have become critical actors with respect to human rights in housing. The municipal/local level of government is increasingly the most accessible level of government. Municipalities are responsible for planning new community developments, facilitating the development of affordable housing, as well as providing social services such as the administration of social assistance benefits and hostels. Decisions about whether a family will get emergency assistance to pay the rent or will have access to subsidized housing, for example, are now made by municipal rather than federal or provincial actors. Their immediate connection to the needs of disadvantaged communities means that municipalities are well situated to explicitly link local issues with human rights. As a result, municipal governments now have an opportunity to develop and implement innovative mechanisms to promote and protect human rights in housing.

Entrenching new commitments to human rights values, participatory governance and social inclusion at the municipal level is now emerging as a critical frontier for the human rights movement. Initiatives have been taken throughout Europe and

in several North American cities including Montreal, San Francisco and New York to establish human rights charters or to incorporate human rights – including international human rights – into municipal law.

While the *Code,* the *Charter* and international human rights law are legally applicable to municipal decision-making, these pieces of legislation and their enforcement mechanisms are usually removed from day to day activities at the municipal level. Municipal human rights charters could transform these remote concepts into workable tools for effective and responsive decision-making at the local level and could effectively bring human rights promotion to the grassroots. Such charters would also provide leverage through which local governments could hold the private sector and other levels of government accountable to human rights values. They could, for example, give municipalities a new credibility when urging provincial governments to increase social assistance rates or the minimum wage, when advocating for a national affordable housing strategy, or when responding to opposition to the development of a shelter for the homeless or supportive housing for people with disabilities. Ultimately, municipal human rights charters have the potential to fundamentally redefine how communities approach and respond to the human rights issues that affect residents.

Over the past two years, CERA and SRAC have been investigating the use of municipal mechanisms to promote human rights and have consulted extensively with researchers, academics, community activists and municipal staff. There are also ongoing discussions with staff and politicians at the City of Toronto about the possibility of the City putting in place its own human rights charter. We have found significant support for establishing municipal human rights mechanisms and believe that the Commission should promote this approach to realizing and creating a culture of human rights in the province.

Promoting Human Rights Compliant Decision Making in Other Administrative Regimes

With the recent release of the *Tranchemontagne*[52] decision, the Commission is in an excellent position to promote human rights awareness and remedies in a variety of administrative boards and tribunals. In *Tranchemontagne*, the Supreme Court of Canada said that human rights law is “fundamental, quasi-constitutional law” that “must be recognized as a law of the people” and accordingly, “must not only be given expansive meaning, but also offer accessible application”.[53] In this regard, the Court held that boards and tribunals, who have the authority to decide legal questions, **must apply** human rights legislation where a human rights issue arises in a hearing before them and reiterated the importance of administrative tribunals deciding an entire dispute

[52] *Tranchemontagne, supra* note 7

[53] ibid at par. 33.

particularly where that dispute encompasses human rights issues and the applicants are vulnerable:

> Where a tribunal is properly seized of an issue pursuant to a statutory appeal, and especially where a vulnerable appellant is advancing arguments in defence of his or her human rights, I would think it extremely rare for this tribunal to not be the one most appropriate to hear the **entirety** of the dispute. I am unable to think of any situation where such a tribunal would be justified in ignoring the human rights argument, applying a potentially discriminatory provision, referring the legislative challenge to another forum, and leaving the appellant without benefits in the meantime … In general, encouraging administrative tribunals to exercise their jurisdiction to decide human rights issues fulfills the laudable goal of bringing justice closer to the people.[54]

CERA and SRAC have recently conducted a number of workshops for legal advocates and administrative decision-makers on how they can better ensure that decisions accord with human rights in housing. Our experience has been that decision-makers are keen to have access to training, information and adequate background materials. Such training, however, ought not to focus on the provisions of the *Code* narrowly construed, but rather, should include a broader view of the obligation to ensure that administrative decision-making is consistent with human rights values, including the right to adequate housing (as discussed above).

The Commission should launch a human rights education campaign directed at members of administrative tribunals and boards, and particularly at those that deal with issues related to housing such as the Landlord and Tenant Board and the Social Benefits Tribunal, to ensure that their decisions are consistent with human rights principals and promote compliance with the *Code.* As noted above, discretionary decisions to evict families into homelessness by the Landlord and Tenant Board or decisions by Social Assistance administrators in relation to assistance for housing start-up costs such as last month's rent deposit have important human rights implications. The ideal of a coherent set of human rights values and principles and a vibrant human rights culture informing all administrative decision-making in Ontario is one that the Commission should make central to its work in this area.

VI. DISCRIMINATION IN RENTAL HOUSING

(a) What are the ways in which people experience discrimination in rental housing on the basis of each ground of the *Code*? How does

[54] ibid at par. 50, 52.

the intersection of *Code* grounds impact on discrimination in rental housing?

(b) What barriers do people face in securing rental housing? What discriminatory practices should the Commission be aware of? What can be done to proactively prevent these barriers and practices?

(c) What are the legitimate considerations in assessing prospective tenants? Why are these reasonable and legitimate business practices? What considerations cannot be justified under the Code?

(d) Bearing in mind the Commission's role in promoting a progressive interpretation of the Code, what policy position should the Commission take with regard to O.Reg 290/98* and other practices that are commonly used to select tenants?**

(e) In what ways do individuals and families experience harassment and discrimination with regard to the occupancy of rental housing on the basis of *Code* grounds?

<u>Experiences of Discrimination in Housing</u>

CERA receives complaints from individuals who experience discrimination based on the entire range of the *Code* grounds. Over the last 20 years, the majority of complaints have come from women - single mothers with children (over 70 percent of CERA's calls are from women and single mothers who face intersecting forms of discrimination), people in receipt of public assistance, racialized persons, immigrants and refugees and persons with disabilities. Youth also form a significant portion of CERA's clients.

1) Intersectionality

The characterization of discrimination as being based on a particular *Code* ground can misrepresent the true experiences of those protected by the *Code*. The vast majority of CERA's clients experience discrimination on a variety of inter-related, mutually reinforcing grounds, rather than on the basis of a single ground. As the Commission's Background Paper notes, this can result in "unique experiences of discrimination". Take, for example, a black, single mother in receipt of social assistance who is denied an apartment. A landlord may deny her an apartment because of discriminatory stereotypes that are based in the combination of her characteristics: "women like that with kids, on welfare – they're promiscuous", "women like that are probably involved in some kind of criminal activity or invite violence because they are with gangs, etc." In filing a complaint, however, the woman is most likely to bifurcate her experience of discrimination, choosing the ground that she can best prove in her complaint.

2) Sex

Low-income women encounter the most severe housing disadvantage, and the housing and homelessness crisis they face tends to be less visible than that of other groups. Women's inadequate housing conditions and homelessness are caused by a number of inter-related factors including, but not limited to:

- Women's poverty;
- Systemic discrimination and inequality experienced by women and particular groups of women in accessing and retaining housing, income support, employment and education programs;
- The unjust application of regulations, laws and policies related to income support programs and housing programs;
- Women's over-representation as sole-support households;
- Lack of social supports to offset the burden women experience in the care giving roles they undertake;
- A shortage of affordable housing;
- Social exclusion; and
- Lack of a safe living environment.

Over the past 20 years the overwhelming majority of CERA clients have been women, particularly single mothers. This is not surprising given women's experiences of social and economic inequality across the board: in the labour market, within the household, within social relationships. Rates of poverty are higher for women and particular groups of women, such as single mothers, and Aboriginal, racialized and/or immigrant women. Needless to say, the economic and social status of women informs their experiences in the rental housing sector.

Women's experiences of housing discrimination are invariably related to their sex and are often related to other characteristics such as their family or marital status, their race/colour, age or disability. What follows is a description of some of the principle forms of sex-based discrimination in housing experienced by women. The other forms of discrimination women experience as a result of other grounds are discussed further below.

(i) Breakdown of Relationship / Leaving Abusive Relationship

Women whose male partners leave them are particularly vulnerable to a number of forms of discrimination in housing. CERA has learned of cases where upon the breakdown of a relationship landlords have refused to transfer the lease into the woman's name (in cases where only the male partner's name was on the lease) in an attempt to either end the tenancy or create a new tenancy to raise the rent.

Upon the breakdown of a relationship women often have no credit rating or landlord references of their own, making it difficult to secure alternate accommodation.

As the Commission's Consultation Paper aptly notes and describes, women in abusive relationships or trying to leave abusive relationships experience particular forms of discrimination. Most women in these situations do not have the economic means to secure private market rental accommodation (because they are on welfare or in low-paying jobs), and social or subsidized housing in most cities – even for women leaving abusive relationships who are ostensibly accorded 'priority' in most jurisdictions[55] – is scarce.

As a result many women are compelled to return to abusive relationships. 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?*

Whether women return to the abusive relationship or try to find accommodation on their own, they risk losing their children to child welfare authorities. The Children's Aid Society of Metropolitan Toronto reports that housing problems were a factor in 20.7% of instances where CAS Toronto brought children into care. Housing problems include violence within the home, but also inadequate conditions (eg: overcrowded, in ill repair, unsuitable for children). Lack of adequate accommodation also resulted in delays in children returning to their homes (11.5% of children experienced such delays for a total of 250 children).

CERA has also learned of situations where women looking for accommodation in hotels as a means of escaping violence have been turned away on the basis that a credit card is required. Many women leaving abusive relationships, particularly if they are low income, do not have credit cards and if they do, may not want to use a credit card as it may expose their whereabouts to a spouse.

(ii) *<u>Poverty</u>*

Women – particularly single mothers – in receipt of social assistance experience discrimination in housing in a number of ways because they are poor. Income criteria rules (described below) prevent many women from accessing apartments. This is a sex equality issue because women and particular groups

[55]It should be noted that in some jurisdictions – Yukon and Northwest *Territories*, for example – women leaving abusive relationships are not accorded priority status for social housing. Also, in many cities where women leaving abusive relationships are accorded priority status, the waiting lists are still so long that this priority is of little benefit to the women when they are most in need.

of women (single mothers, young women, racialized women) are disproportionately poor.

As was discussed in the previous section on other legislative schemes in this submission, there are a number of income related programs that disproportionately affect women and have a direct impact on their ability to access and maintain housing. For example, the shelter component of social assistance is so low, women cannot afford to rent housing; women tend to be concentrated in low wage, service sector jobs earning minimum wage which is not a living wage; the national child benefit supplement is clawed back from parents in receipt of social assistance, the majority of whom are single-mothers.

(iii) *Sexual Harassment*

As the Commission Consultation paper rightly points out, there is a power imbalance in the landlord tenant relationship, particularly where the tenant is a low-income woman. As a result, it is not uncommon for landlords and property managers to behave inappropriately toward low-income women tenants, particularly if they are experiencing financial difficulty or a personal crisis that could jeopardize their tenancy. CERA has received complaints that landlords sexually exploit low-income women tenants seeking sexual favours in lieu of rent if they fall into arrears or to prevent eviction, or if they require services for the upkeep of their apartment.

3) Receipt of Public Assistance

As the Commission's Background Paper indicates, stereotypes and negative attitudes about people in receipt of social assistance abound and are prevalent in the housing sector.

Tenants in receipt of Ontario Works (OW) or Ontario Disability Support Program (ODSP) benefits are commonly denied housing because of the source of their income. In fact, in CERA's experience, receipt of public assistance is the most common and open form of discrimination. In our experience, many housing providers comfortably adopt a blatent policy against renting to people on social assistance. Colleagues at housing help centres tell us that a key challenge to setting up a housing registry for low-income clients is finding landlords that will rent to people receiving social assistance. A quick review of advertisements in the *Renters News* or another similar apartment rental magazine or website - with their frequent request for working or "professional" applicants – helps illustrate the extent to which discrimination against low income households is "normalized" in our society.

Policies that prohibit welfare recipients from renting apartments are invariably based on discriminatory stereotypes and erroneous assumptions. 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.

Recipients of social assistance also experience discrimination in housing because the level of the shelter allowance component of their entitlement is too low and, as a result they cannot secure or maintain housing. Several tenants have filed complaints in this regard, against the province of Ontario. See section above on Housing Affordability for an elaboration on this issue.

4) Family Status

While "adult only" buildings are not as prevalent as they have been previously, our clients are frequently turned away because they have children, particularly when applying to small owner-operated apartment buildings or second suites in homes. Landlords commonly say that the apartment is "not appropriate" for a family with children, or that it is too small. Similarly, advertisements for these apartments often state, "not suitable for children" or "suitable for a single person or couple". Though larger, corporate landlords and property managers may not explicitly refuse applicants because they have children, as will be discussed below, their occupancy policies can have the same effect. The preference for "childfree" buildings is also illustrated by new condominium developments that sell the units based on attracting "Professional People" or encouraging "Urban Lifestyles". In CERA's experience, these terms are code for adult only.

Although the ground of family status extends to men and women, by far, women – single mothers – are most affected by this form of discrimination. As noted above, over the last 20 years, women experiencing discrimination based on this ground are the vast majority of CERA's client base, resulting in the need to establish a specific women's program at CERA as well as a national women's housing group which CERA coordinates.

The impact of this type of discrimination against all women is devastating, but it is particularly devastating for women fleeing abuse and domestic violence. Women will do almost anything to avoid absolute homelessness because of the violence they experience on the street and because it invariably means losing their children to child welfare authorities. And so, when denied accommodation for discriminatory reasons, women often have no choice but to return to their abusive partners. Upon returning, women live with the threat that their children will be apprehended by the state because they are living in inadequate (i.e.: violent) housing. These risks are particularly acute for Aboriginal women who, as a result of their overwhelming poverty and their experiences of discrimination, have children apprehended at a much higher rate than other women. Indeed,

clients are regularly referred to CERA from various children's aid societies across the province in an effort to combat the impact of this form is discrimination.

5) Race and Colour

While race and colour are not reported to CERA as frequently as other grounds noted above, this cannot be interpreted to suggest that race-based discrimination or discrimination based on intersecting grounds including race, are less prevalent. Indeed, in CERA's experience over the last 20 years, discrimination based on race and its related characteristics are the hardest cases to prove and are most frequently dismissed at both the Commission and Tribunal. CERA believes that this is related to the clandestine and subtle deep nature of racial discrimination and the difficulty in proving it. Although racial discrimination infiltrates every aspect of life in Ontario – from education to employment to housing – public disdain for racism makes gathering evidence to prove racial discrimination difficult. Indeed, landlords who do not want to rent to racialized persons have sophisticated ways of managing not to do so. Moreover, because racism is often systemic in nature – existing in the very structures of the housing market – it can be difficult to identify.

In CERA's experience, few landlords will say directly that they will not rent to someone based on their race. In fact, when CERA and/or our clients are sure that race is a factor in a prospective tenant's denial of an apartment, the evidence to show that this is the case is corroborative and circumstantial – very rarely direct. Apartments will be suddenly "rented", "off the market" or in use by a family member, factors that can be difficult to challenge without the time and resources to conduct an *immediate* investigation.

More research needs to be undertaken to prove race-based discrimination in housing. The Commission should consider working with CERA to develop, and implement paired-testing research, which can expose the extent to which race-based discrimination is a factor impeding access to housing for racialized people.

6) Ancestry, Place of Origin/Ethnic Origin and Citizenship

As with race, CERA knows that the prevalence of discrimination in housing based on ancestry, place of origin, ethnic origin and citizenship is far greater than the numbers of calls we receive each year with complaints of this nature. We know anecdotally (through our public education and outreach) that these communities face many challenges in accessing housing that are directly related to *Code* grounds. Unfortunately, these communities are vulnerable to accepting, rather than challenging, discrimination because they do not have the resources – financial or otherwise – to fight discrimination, or they are unaware of their legal rights as new arrivals to Canada. This is often confirmed by CERA when we conduct workshops with newcomers and refugees.

As the Commission's background paper suggests and CERA's experience confirms, the most common form of discrimination experienced by newcomers and recent immigrants to Canada is demands by landlords that newcomers pay the rent up to 12 months in advance. Landlords often suggest that this is to offset their concern that the prospective tenant does not have a Canadian credit history or landlord references. In addition, landlords often require newcomers and refugees to secure guarantors with substantial incomes. These practices continue despite the Board of Inquiry's decision in *Ahmed v. 177061 Canada Ltd.*[56]*.* In that case, the complainant, represented by CERA, challenged tenant selection policies that require prospective tenants to have good Canadian landlord references and credit history, and to satisfy minimum income and job tenure criteria. The Board found that these policies disadvantage newcomers to Canada, discriminate because of citizenship and place of origin and are illegal under the *Code*. In particular, the Board found that no credit or landlord references cannot be equated with bad credit or landlord references.

Newcomers and refugees are also often denied housing because of occupancy by-laws that are based in western notions of family (i.e.: traditional 2 parent/2 children).

CERA notes also that within immigrant and refugee communities discrimination manifests differently, depending on race and/or colour. There is no doubt that *all* immigrants potentially experience barriers in accessing housing because of discrimination. At CERA, however, we receive more calls from racialized newcomers who experience discrimination based on their immigrant status combined with their race or colour. For example, a landlord may require co-signors of all newcomers, but will only be concerned about "cooking smells" and "extended family" from South Asian or African newcomers, resulting in additional barriers to overcome in trying to secure housing.

7) Disability

There is no question, as set out in the Commission's Background Paper, that outright denials of tenancy, an utter dearth of accessible buildings, non-inclusive housing design, and the inadequacy of the Ontario Building Code all contribute to the inequality in housing experienced by persons with disabilities. Further, there can be no dispute that persons with mental disabilities face additional challenges, namely discriminatory negative attitudes and stereotypes that prevent them from accessing housing. In this regard, while CERA agrees and our experience confirms the observations made by the Commission in respect of discrimination based on disability in housing, there are additional factors that, in CERA's view, must be understood and addressed if true equality in accommodation is to be realized for all persons with disabilities in Ontario.

[56] *Ahmed v. 177061 Canada Ltd.* (2002), 43 C.HR.R. D/379 (Ont. Bd. Inq.) [hereinafter *Ahmed*].

(i) Women and Disability

As noted above, women face particular issues with respect to equal treatment in the occupancy of accommodation due not only to their sex, but also because of additional factors that compound women's already disadvantaged position in society. Disability is one such factor.

As recent studies have confirmed, women leaving abusive relationships find that shelters, when available, are an essential resource in that they provide reprieve as well as a safe place in which to consider options, such as how permanent and safe housing may be secured.[57] For the majority of women with disabilities, however, even this limited availability is restricted.

Recent calls by CERA to approximately 10 women's shelters found that **none** were fully accessible, and in fact, only two were partially accessible. To this end, CERA's attempts to successfully negotiate accommodation on behalf of a woman with a disability who was unable to remain in her current home due to abuse were thwarted because there was no where for her to stay temporarily while her prospective housing was being modified to accommodate her disability. While it is clear that all women leaving abusive situations face difficulty in accessing temporary shelter and/or transition housing, the ***additional*** discriminatory barriers faced by women with disabilities compound the already extreme vulnerability that is the reality of a woman trying to leave an abusive relationship.

(ii) Maintenance of Housing for Persons with Disabilities

While ***access*** to housing for persons with disabilities is a critical barrier to obtaining equality in accommodation, recent trends at CERA suggest that the ability of individuals with disabilities to ***maintain*** housing is increasingly problematic. In this regard, over the last several years, calls to CERA from individuals whose housing providers refuse to modify units where because of age or progressive disability independent living is hindered, are increasingly significantly.

This type of discriminatory behaviour on the part of housing providers leaves the tenants with no recourse, as finding accessible accommodation, as noted above, is extremely challenging, if not impossible. Individuals are placed at risk of eviction due to "imposed" health and safety concerns. They are forced to forego living independently, also as a result of "handicaps" *imposed* by a failure to provide accommodation. Many are forced to return to live with family or end up in nursing or care homes – a form of segregation of persons with disabilities. From CERA's perspective, the "forced" evictions, institutionalization and segregation are clear violations of the *Code* and of human dignity.

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[57]YWCA Canada, *Effective Practices in Sheltering Women: Leaving Violence in Intimate Relationships,* Phase II Report 2006 at xiii.

(iii) *The Withdrawal of Community Support Services*

As noted in the introduction, the "substantive right to … equality in housing … places obligations on a myriad of actors – whose action or inaction may determine whether *Code* protected groups actually experience equality in the occupancy of accommodation." Further, the Commission's background paper recognizes that a myriad of barriers, including inadequate social and financial assistance, as well as "a lack of appropriate mechanisms to facilitate deinstitutionalization all contribute to the difficulties that many [disabled persons] face in their quest to live independently."[58]

Recently, in the province of Ontario, the government has formed 14 non-profit corporations, which together are called the Local Health integration Network (LHIN). The LHIN is responsible, through its regional LHIN offices (LHINs), for overseeing "nearly two-thirds of the $37.9 billion health care budget in Ontario".[59] LHINs have been "given the mandate for "planning, integrating and funding health care services" in the province and the health care services include: Hospitals, Community Care Access Centres, ***Community Support Services,*** Long-term Care, Mental Health and Addictions Services; and Community Health Centres.

It recently came to CERA's attention that several health care providers funded by the province of Ontario through the LHIN, are "consolidating" Community Support Services such as attendacare to persons with physical disabilities (i.e.: feeding, bathing, toileting, administration of medication, etc.). The result is that individuals who have lived independently for decades have been told to move or to simply do without essential services. Given the particular vulnerability of persons with disabilities who rely on community support services in order to enable them to live – and live independently – it is particularly egregious that they are being threatened with no service in the name of efficiency and consolidation. More egregious is the fact that these supports, to CERA's knowledge, are being withdrawn only from persons who reside in public housing.

CERA believes that this is a direct violation of the right to equality in the occupancy of accommodation, as it has been defined throughout this submission. Further, it is also in direct contravention of the very purpose of the formation of the LHIN as set out by The Minister of Health and Long Term Care:

> Welcome to a new era in health care in Ontario …The decision to move to a system where the delivery of health care in this province is prioritized, planned and funded through bodies known as Local Health Integration Networks (LHINs) was one based on the idea

[58]*Background Paper, supra,* note 3 at 43.

[59]See: http://www.lhins.on.ca/home.aspx

> that people in local communities across the province are best placed to make the important decisions about how health care is delivered in those communities … The old approach where the prioritization and planning of local health care needs happened primarily at the Ministry's 'Head Office' in downtown Toronto ***was not as responsive to those needs as it could have been***. Nor did it readily facilitate the ***inclusion*** of local voices seeking to help shape the future of health services in their communities … ***Patients in your LHIN will receive better care from a system that will be more accessible, accountable and sustainable for everyone***. I encourage you to take a moment to look around this web site, and see how you can contribute to this powerful health care conversation online.
>
> *George Smitherman*
> *Minister of Health and Long-Term Care*[60]

8) Youth

Youth's experiences of discrimination in housing are also under-reported and unchallenged. The bulk of CERA's contact with youth comes from workshops with homeless or street involved youth who are in their mid to late teens. For young people (16 years and older), housing discrimination appears to be the norm. In fact, youth seem to expect to be experience discrimination. And in some instances have internalized the 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".

Through a recent series of workshops in Toronto and Ottawa CERA has learned that some landlords are now refusing to accept tenants whose only references are from boarding houses or room and board shelters. This has a disproportionate impact on young people and those in receipt of social assistance who rely on those services in order to avoid living on the street.

Young single mothers contact CERA at a higher rate than any other youth, usually due to the desperation involved in trying to find housing for their children. CERA's workshops in women's shelters confirm that young single mothers experience significant discrimination in trying to access housing – and that is typically based on a variety of intersecting grounds including, age, race, receipt of public assistance and family and/or marital status.

The impact of discrimination for youth results in them being forced to return to abusive family situations, living on the street, couch surfing with friends or living in shelters. Many youth end up in rooming housing where there are no human

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[60] ibid.

rights protections at all and for young women, physical security is an issue as well. As such, CERA staff are often confronted with "amused' youth in workshops who cannot fathom a process by which it may take several years for them to get a remedy for discrimination resulting is disinterest in pursuing a human rights remedy.

Securing Rental Housing

The following issues are among the most significant barriers to the acquisition of adequate housing by low-income individuals and families:

- Minimum Income Requirements
- Credit and Reference Requirements
- Rental Insurance
- Co-Signor and Guarantor Requirements
- Job Tenure Requirements
- Occupancy Rules and By-laws; and
- Discriminatory Zoning

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1) Minimum Income Requirements

A minimum income requirement is the application by housing provider of a rent-to income ratio of approximately 30% for any prospective tenant. What this means practically is that if a prospective tenant has a gross income of $900.00 per month, that renter would be denied an apartment if the rent for the apartment was anything over 30% of $900.00 - or $300.00 per month. Given the exorbitant rents across Ontario, the majority of renters in the province – even those that do not typically consider themselves "low-income", spend more than 30% of their income n rent.

Given that the *average* rent in Toronto for a two-bedroom apartment in 2007 is over $1000.00 a month[61], a single parent with one child whose salary is $50,000 per year would likely be denied housing approximately 50 percent of the time through the application of minimum-income criteria (as 30% of monthly income is approximately $1,250.00 per month). When one considers the fact that the average family income in Ontario of a single parent on social assistance (90% of who are single mothers) is just over $10,000 per year[62], the impact of the application of this discriminatory criteria become clearer.

Although recent Human Rights Tribunal decisions have made it clear that minimum income criteria is a violation of the *Code* and that equality seeking

[61]See the Canada Mortgage Housing Corporation Rental Market Survey (April 2007) at http://www.cmhc-schl.gc.ca/en/corp/nero/nere/2007/2007-06-06-0815.cfm.

[62]Campaign 2000, *Child Poverty in Ontario: Promises to Keep…The 2006 Report Card on Child Poverty in Ontario* Available at: http://www.fsatoronto.com/policy/OntarioReport2006.pdf

communities are disproportionately excluded from rental housing on the basis of such criteria, the widespread use of minimum-income criteria by housing providers continues to pose a significant barrier to low-income persons securing housing.

CERA firmly believes that a key factor in the continued prevalence of this screening mechanism is O.Reg 290/98. In CERA's experience, this regulation is seen by many to permit the use of income criteria, despite Tribunal decisions that state the contrary.[63] O.Reg. 290/98 will be discussed in greater detail in a subsequent section of this submission.

It is important to note that the use of the criteria is not limited to private housing providers, including large landlords to second-suite providers, but is widely used by public, non-profit and cooperative housing providers as well. In fact, CERA submits that the use of minimum-income criteria is actually *more* commonly used in the non-profit or public sector. CERA attributes this phenomenon to the reluctance of these housing providers to negatively affect the income mix in their developments – by having too many low-income tenants. From CERA's perspective, the goal of an "acceptable income mix" must not be used as justification for the use of clearly discriminatory criteria.

2) Credit and reference requirements

Conducting credit checks and collecting and assessing information on rental history are common practices in the tenant selection process and are prescribed in the *Code* under Section 21(3) and O.Reg. 290/98. As will be discussed below, while CERA believes that these practices can be implemented in a fair manner, the inflexible use of credit history and/or rental history is often a barrier for equality seeking groups to securing adequate housing. In particular, these requirements make it difficult for newcomers and refugees, young first-time renters, and women entering the rental market after a relationship breakdown to secure housing. Youth and newcomers to Canada frequently do not have prior Canadian credit or landlord references. Similarly, women leaving relationships are much more likely than men to be entering the housing market with no previous credit or rental history. Further, where women in these situations have credit records, they are typically negative, as women frequently suffer significant financial hardship after a break-up.

Housing providers, therefore, need to be flexible in the manner in which they use credit checks and previous rental history in order to accommodate the particular needs of equality seeking communities disadvantaged by such practices.

3) Rental Insurance

[63]See *Vander Schaaf v. M & R Property Management Ltd*. (2000), 38 C.H.R.R. D/251 (Ont. Bd. Inq.); *Sinclair v. Morris A. Hunter Investments Ltd.* (2001), 41 C.H.R.R. D/98 (Ont. Bd.Inq.) [hereinafter *Sinclair*]; and *Ahmed, supra* note 56.

Increasingly, CERA has been hearing examples of landlords requiring prospective tenants to purchase insurance as a condition for renting. While CERA believes that that this is an attempt to offload potential liability costs onto tenants, the insurance premium can act as a significant financial barrier to individuals receiving social assistance and other equality seeking communities disproportionately likely to be living with low incomes, such as young families with children, newcomers and refugees, individuals with disabilities, youth, Aboriginal people and members of racialized communities.

4) Guarantor Requirements

CERA does not dispute that there are circumstances where asking a prospective tenant to provide a co-signor or guarantor is appropriate (i.e. where there are *legitimate* reasons to disqualify the applicant such as a negative rental history). However, in CERA's experience, housing providers often demand guarantors simply because a prospective tenant is identified by a *Code* ground - that is to say, for a discriminatory reason. Most commonly, guarantors are required of single mothers, newcomers and refugees (place of origin or citizenship), youth and persons in receipt of public assistance or by persons who, because of intersecting *Code* grounds (Aboriginal single mothers) are more likely to have low-incomes. Often landlords will use the guarantor requirement when other discriminatory criteria have already been applied. For example, where a prospective tenant does not meet minimum-income requirements of where there are not previous Canadian credit or landlord references. Frequently, the guarantors are also required to meet onerous minimum income criteria.

There is no doubt that it is a violation of human rights and dignity to be required to provide a guarantor simply because a person is low income or from a marginalized group. There is no evidence to support the assumption that tenants with low-incomes or no prior rental or credit history are at any greater risk of defaulting on rent than other tenants. In fact, in CERA's experience, low-income tenants find it so difficult to find housing that they will do anything they can to maintain it, including doing without other necessities such as food, clothing and medicine. Lastly, most people, particularly newcomers, do not have access to anyone who can act as a guarantor – and especially when that guarantor also has to meet minimum-income requirements.

5) Job Tenure Requirements

Many equality-seeking groups apply for housing with limited or no employment history. The Ontario Board of Inquiry in *Sinclair v. Morris A. Hunter Investments Ltd.*[64]*,* held that a landlord's requirement that applicants be employed on a permanent basis and satisfy minimum tenure requirements with a particular

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[64] ibid.

employer discriminated against young people as they are more likely than older people to have unstable employment and shorter employment histories. From CERA's perspective, job tenure requirements of a minimum number of months or years of employment can be a significant barrier to securing housing, not only for young people, but for newcomers, women re-entering the workforce after child rearing[65] and persons with disabilities, as for many of these groups employment history may be non-existent, part-time or primarily contractual in nature.

6) Occupancy Rules

Arbitrary occupancy guidelines established by landlords are a significant barrier for families with children. Many landlords formally and/or informally establish maximum occupancy rules, such as a requirement that no more than two people occupy a one-bedroom apartment. In CERA's experience, these occupancy rules appear to be based on housing providers' personal assumptions and preferences regarding what is appropriate for their tenants. In CERA's experience landlords' occupancy rules tend not to be based on actual 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. Maximum occupancy rules also pose a significant barrier to non-traditional (i.e: non-Western) or extended families.

Some landlords also impose occupancy rules regarding the sharing of bedrooms by children of the opposite sex. Again, these rules are not based on legitimate health or safety concerns, but on personal assumptions about the appropriate allocation of space to poor families. Although landlords often advise CERA that it is the Children's Aid Society that does not permit them to allow children of opposite sexes to share bedrooms. The Children's Aid Society of Toronto has confirmed on numerous occasions that no such policy exists. Like arbitrary rules limiting the number of occupants per apartment, rules about children sharing bedrooms, besides being clearly discriminatory, act as a significant barrier to families trying to secure affordable and appropriate housing.

Occupancy standards used by social housing providers or cooperatives can be particularly problematic, as they are usually codified in policies or internal/member by-laws that are not easily modified. These standards are

[65] According to Statistics Canada, 26% of employed women worked part-time in 2006, compared to only 5% of employed men. Accessed online at: http://www40.statcan.ca/l01/cst01 /labor12. htm? sdi=employment.

typically based on occupancy guidelines or prescriptions established by federal, provincial or municipal governments. For example, the Canada Mortgage and Housing Corporation developed the National Occupancy Standard (NOS), which recommends one bedroom per adult (two spouses can share), and a maximum of two same-sex children per bedroom. The NOS recommends that opposite children over age five not share a bedroom.[66] In addition, Ontario's *Social Housing Reform Act* (SHRA) permits municipal service managers to develop standards for locally operated housing programs and where a municipal service manager does not establish its own occupancy standards, the standards established by the SHRA will be in effect. The SHRA standards are set out in Ontario Regulation 298/01:

> 28 (2) The smallest unit a household is eligible for is a unit that has
>
> (a) one bedroom for every two members of the household…[67]

The City of Toronto has developed its own guidelines[68] for access to rent-geared-to-income housing which states:

(a) No more than 2 people per bedroom.
(b) Adults who are spouses or same-sex partners of each other are given one bedroom.
(c) Children of the opposite sex are given separate bedrooms. However, two children of the opposite sex may share a bedroom if the applicant desires. If the bedroom to be shared does not provide the minimum space required for two people as stated in the City's Municipal Code Property Standards (currently 4 square metres, or 43.056 sq. ft., of space per person), then the applicant household cannot be housed in the unit.
(d) Children of the same sex are given one bedroom. If a bedroom, which would otherwise be shared by two children, does not provide a minimum of 4 square metres (43.056 sq. ft.) of space per person, an additional bedroom will be allocated.
(e) A single parent may share a bedroom with a child of the same sex if the applicant desires.

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[66] Canada Mortgage and Housing Corporation Audit and Evaluation Services (2003), *Co-operative Housing Programs Evaluation* (Ottawa: Industry Canada).

[67] *Social Housing Reform Act*, S.O. 2000, Ch. 27, O.Reg. 298/01 [hereinafter SHRA].

[68] City Guideline, Number 2003-8 (Revised June 28, 2004), *Local Occupancy Standards (Revision II).* Available at: http://www.toronto.ca/housing/social_housing/guidelines/2003-8.pdf

These policies and standards were undoubtedly developed to ensure that social housing meets a high standard in terms of habitability. However, when implemented inflexibly by social housing providers, they result in low-income families with children having to wait excessively long periods to access subsidized units of the prescribed size. A low income single mother with a young son struggling to pay full market rent in the private sector may choose to apply for a subsidized one bedroom apartment in order to avoid the many extra years it could take to access a subsidized two bedroom apartment. However, because of social housing occupancy standards, she may be ineligible for the one bedroom apartment. In addition, low-income families applying for market rent social housing units are frequently denied access to apartments that are higher quality and cheaper than comparable units in the private rental market when they cannot meet the internal occupancy standards.

Families should not be held ineligible for subsidized or market rent apartments in social housing based on the number of people to occupy the unit unless the housing provider can demonstrate that it would pose an undue hardship to rent to the family – i.e. that it would pose an unreasonable health or safety risk. CERA would argue that the occupancy standards developed by and for social housing providers do not meet the test for reasonableness established by the Supreme Court of Canada in *Meiorin*.[69]

Although the Commission's *Policy and Guidelines on Discrimination Because of Family Status*[70] discuss the issue of "bona fide" versus "arbitrary" guidelines around occupancy, CERA believes that further elaboration from the Commission of exactly what constitutes "bona fide" and "arbitrary" – and how each is determined – would be beneficial. In this regard, CERA submits that the most reasonable standards presently available – those which have been developed with health and safety in mind and that place the fewest restrictions on the freedom of families to determine what is appropriate for their needs – are municipal occupancy/over-crowding by-laws and regulations.

<u>Legitimate Considerations by Landlords</u>

As should be clear from the previous discussion, current tenant screening practices significantly restrict the ability of equality seeking individuals to access appropriate and affordable rental housing in Ontario. Housing providers will no doubt put forward that rigorous tenant screening is essential for the viability of their businesses, as it will minimize their losses from rental arrears. In deciding the appropriate limits to tenant selection practices, it will be important for the Commission to question common assumptions about tenant screening and the

[69] *British Columbia (Public Service Employee Relations Comm.) v. BCGEU ("Meiorin")* (1999), 35 C.H.R.R. D/257 (S.C.C.).

[70] Ontario Human Rights Commission, *Policy and Guidelines on Discrimination Because of Family Status* (April 30, 2007).

"business case" for these practices. For example, as indicated by research conducted by N. Barry Lyon Consultants Ltd. for the Board of Inquiry hearing *Kearney v. Bramalea Ltd.*, tenant screening plays a very small role in the viability of rental housing businesses:

> Risk of tenant default is relatively insignificant as a determinant of the viability of a residential rental business. We have found that bad debt usually makes up less than 1% of gross revenue. This amount of bad debt is normal in most businesses, including retail and wholesale businesses. There is no apparent justification for suggesting any greater exposure to the risk of bad debt in the residential rental apartment business, than in most others.
>
> When we considered the effect of a typical level of bad debt on profitability and on return on investment, we found that the effect was relatively insignificant. Underscoring this is the finding that eliminating an average level of bad debt altogether would only increase the rate of return by about one tenth of one percent. Similarly, doubling the average level of bad debt would only reduce the rate of return by one tenth of one percent. Indeed, a minor fluctuation in property tax rates, mortgage rates, or an unexpected repair bill, pose equal and potentially more serious risks for landlords than is the risk of increased tenant default.
>
> When rental businesses fail, the reason is usually because the investor has paid more than the income stream can bear, has failed to set aside money for necessary repairs, or has accepted too low a capitalization rate because of unrealistic expectations of equity appreciation. Tenant default on rent is not a significant cause of business failure in the residential rental business.[71]

Of course, since this research was completed, rents in Ontario have increased dramatically and with them the possibility of tenant arrears and default. While CERA and SRAC are not aware of recent research on the impact of bad debts on the viability of rental housing businesses, the 2006 Annual Report of Cap Reit, a residential apartment investment trust which operates over 18,000 units in Ontario, suggests the business impact continues to be very low. In their report, Cap Reit states that vacancies, tenant inducements, and bad debt *combined* only amounted to 3.5% of operating revenues in 2006.[72] Given how little bad debt likely contributes to landlords' balance sheets, it is hard to imagine that limiting pre-screening of tenants would result in such an increase in bad debt as to

[71]N. Barry Lyon Consulting Ltd. (1995), *The Impact of Rent Arrears on the Viability of Residential Landlords' Businesses.* Prepared for the Board of Inquiry hearing in *Kearney, supra* note 6.

[72]Cap Reit 2006 Annual Report. Accessed at http://library.corporate-ir.net/library/12/ 124/124438 /items/243891/AR2006.pdf

impose undue hardship. It is important, therefore, that the Commission not overstate the business need for tenant screening. In fact, it is quite possible that there is a strong business argument for minimal screening as it would fill units more quickly and reduce vacancy loss.

Furthermore, any discussion of the assessment of prospective tenants must be premised, as stated earlier, on the recognition of housing as a human right. Housing providers are not selling a mere commodity, but are providing access to a necessity that is recognized as a fundamental human right in international covenants ratified by Canada.[73] It is, therefore, critical that the Commission promote tenant selection practices that are consistent with this approach to housing and with the understanding that Section 2 of the *Code* protects the right to the equal enjoyment of *the right to adequate housing* without discrimination on prohibited grounds.

With this, there is a need to shift the focus of the tenant selection process in rental housing. Currently, housing providers act much like potential employers, screening applicants in order to determine who is *qualified* – or worse, who is *most qualified* - to be their tenant. In its extreme, this approach is exemplified by a minority of landlords who "collect" applications and then search amongst them for the "preferred" applicant. Applying for an apartment *should not* be like applying for a job, but instead should be more in keeping with applying for an essential service such as telephone or hydro. The assumption with these services is that an individual will be able to access them unless there are legitimate reasons to disqualify the person and he/she was unwilling to take steps to address those concerns. In rental housing, landlords should not be able to deny a tenant an available unit unless they can show clear and compelling reasons why the tenant should be disqualified. The onus is thus shifted from the tenant having to show that he/she *qualifies* for a unit, to the landlord having to show that the tenant is *disqualified*.

On first glance, this may appear to be merely semantics, but it actually reflects a fundamental shift in housing providers' approach to tenant selection. It reflects the belief, in line with housing as a fundamental right, that no one should be denied access to a home without a compelling justification.

We have organized our discussion of what could be considered a "compelling" reason to refuse a prospective tenant based on the practices listed in Section 21(3) of the *Code.* It should be noted that CERA and SRAC do not accept the use of the phrase "business practice" in the context of housing, as it establishes housing as a mere commodity – just another business – and fails to recognize its status as a basic right.

[73] For example, see the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Rights of the Child*, the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *International Convention on All Forms of Racial Discrimination at: http://www.ohchr.org/english/law/index.htm*

1) Income Information

CERA and SRAC recognize that collecting income information (including information on savings where a prospective tenant does not have steady source of income) can be valuable for housing providers, as it helps confirm a prospective tenant's identity and identifies the landlord's remedy in case of rent default. However, 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. To do otherwise results in clear disadvantaged to low income individuals and families – households that are disproportionately represented among groups protected by prohibited grounds of discrimination.

Evidence in the *Kearney* case (and presented to the Standing Committee considering the changes to the *Code*) found that 99% of landlords require reference information and virtually all require information about income or employment. A minority of landlords, however, require a minimum level of income. In other words, the majority of landlords who require and use income information do not qualify tenants or require co-signors on the basis of income level. Income information is used for other reasons - to assure the landlord that the person is who they claim, that they have a legal source of income and will not be carrying out illegal activities in the apartment, etc.

From CERA's perspective, it is inappropriate for a housing provider to determine what an applicant can "afford" or question how that applicant will manage personal expenses. Where there is no history of rental default, it is only reasonable to assume that an applicant will apply for an apartment at a rent he/she can pay. Removing income as a basis for disqualifying tenants in all but the most extreme cases would address a major form of systemic discrimination in access to housing.

In cases where 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. However, as above, an absence of income should not be used to deny a prospective tenant housing, except in extreme circumstances. We are confident that it would not prove an undue hardship on housing providers to act on the assumption that, unless contrary evidence is provided, a prospective tenant will be able to pay his/her rent.

2) Credit Checks and Credit References

CERA and SRAC do not oppose the use of credit checks or credit references to determine if there are legitimate reasons to disqualify a potential tenant. However, only negative credit checks/references that relate to a **history of non-payment of rent** should be considered. The fact that a prospective tenant has a

poor credit rating because of failure to pay a credit card or telephone bill is not an indication that the tenant would be likely to default on his/her rent. It is instructive to look at the practices of providers of other essential services, such as telephone and hydro, in this regard. Frequently, these providers do not conduct credit checks at all and where they do, they generally only consider credit problems related to payment of the particular service.[74]

Where a credit check reveals a history of non-payment of rent, it would be inappropriate for a landlord to simply deny the person housing. The housing provider should have an obligation to inquire with the tenant about the circumstance surrounding the non-payment and whether the situation has changed, and work with the tenant to ameliorate the risk of future default. Reducing future risk could be accomplished by, for example, suggesting direct payment of rent where the tenant is receiving Ontario Disability Support Program or Ontario Works benefits, or by asking for a co-signor, guarantor, or personal reference. This is fair and consistent with an approach to tenant selection that views housing as a fundamental necessity. It is also consistent with the practices of telephone and energy providers which respond to a history of non-payment related to the particular service with a requirement that the customer pay a deposit or, in some cases, set up a pre-authorized payment plan.

3) Rental History

Like credit checks and references, CERA does not oppose the use of previous rental history to determine if a tenant poses an unreasonable risk. A tenant whose rental history shows a history of non-payment of rent, or a history of behaviour which justifies early termination of a tenancy, such as illegal activities, unreasonable damage to the unit or residential complex, or unreasonable disturbance of the landlord or other tenants could potentially be disqualified on the basis of this rental history. However, again, before disqualifying a prospective tenant, the housing provider should have an obligation to inquire with the tenant about the circumstances that led to the poor rental history and whether those circumstances have changed, and work with the tenant to find ways to ameliorate future risk.

4) Guarantees

As stated earlier, housing providers should only be able to require a guarantor or co-signor where there is a legitimate reason to disqualify a prospective tenant. It would clearly be contrary to the *Code* to require a co-signor/guarantor based on a prospective tenant's membership in a group protected by a prohibited ground

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[74]Hydro One and Enbridge do not require a credit check or deposit for new customers. Customers that have a history of non-payment of their Hydro One or Enbridge bills may be required to provide a deposit; Bell Canada may complete a credit check, but they are only concerned about outstanding Bell bills; Rogers does not require a credit check or deposit, but may require pre-authorized payments if the customer has unpaid Rogers bills.

of discrimination. Similarly, CERA would argue that it would be contrary to the *Code* to require a co-signor/guarantor where the basis of this requirement is that the prospective tenant does not meet another requirement that is discriminatory.

5) Other Practices

Another issue that frequently arises in our work is housing providers' tendency to require prospective tenants to provide their Social Insurance Number (SIN) when they are completing an application. Presumably, landlords use this information to conduct credit checks of applicants. However, the Federal Government specifically warns against providing SIN numbers to landlords[75] and it is our understanding that housing providers do not in fact need the number to conduct a credit check. Significantly, a SIN can identify an applicant's refugee status and, thus, increases the likelihood that these households will experience discrimination. Because of this, and the fact that there appear to be no legitimate reasons to require it, the Commission should clarify that housing providers are not permitted to ask for the Social Insurance Number of prospective tenants.

This raises the issue of rental application forms. Unlike employment applications, there are no provisions in the *Code* to guide landlords in the development and use of rental application forms. Considering the Human Rights Tribunal decision in *St. Hill v. VRM Investments Ltd.*[76], which held that a question on a rental application that asks the age of the prospective co-occupant indicates an intention to discriminate, housing providers should be seeking guidance in this regard. CERA recommends that the Commission develop a "model" application form that can be distributed to landlords across Ontario through the Commission's website, landlord advocacy organizations such as FRPO, housing help centres and other community-based organizations, and the Landlord Self-Help Centre.

Finally, prospective tenants should be accepted on a "first come, first served" basis. That is, where there are no legitimate reasons for disqualification, the first person to apply should be offered the unit. The Commission should make it clear that landlords are not permitted to "collect" applications in order to choose the "best" applicant, and that doing so could be used as evidence of discrimination.

Invariably, there will be applicants who are turned down for apartments for legitimate reasons. What is the duty toward these individuals and families, particularly in light of the right to adequate housing? CERA does not take the position that housing providers must accept anyone who applies for an apartment. In those situations where someone cannot access housing for legitimate reasons, there is a societal – and governmental – responsibility to

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[75]Service Canada website, at http://www1.servicecanada.gc.ca/en/sin/protect/provide.shtml.

[76]*St. Hill v. VRM Investments Ltd.* (2004), CHRR Doc. 04-023, 2004 HRTO 1[hereinafter *Hill*].

respond and ensure that the person is adequately housed. Unfortunately, this topic goes beyond the scope of the present submission.

Ontario Regulation 290/98

1) S. 21(3) Should be Repealed and Regulation 290/98 Rescinded Because They are Wrongly Understood as Permitting Discrimination

CERA has consistently taken the position that s. 21(3) should not have been added to the Code on the basis that it may be, and has been, wrongly interpreted to permit the *discriminatory* use of income information, credit checks, landlord references, co-signors and other practices. The idea that a discriminatory practice should be permitted on the condition that it is used in conjunction with other potentially discriminatory practices is unprecedented, at odds with domestic and international human rights norms and with the principles and values of human rights legislation.

Regulation 290/98 has created the impression among many landlords that they are permitted to use minimum income criteria (MIC) – a practice that has been found to constitute serious discrimination against most of the groups protected under the Code – as long as MIC are used in conjunction with the other listed practices, which may also be used or applied in a discriminatory fashion in many circumstances.

The confusion and increased discrimination resulting from these amendments to the *Code* has been compounded by the fact that in a number of hearings, the Human Rights Commission has argued on the side of the landlord (indeed, in two hearings in which CERA was involved, the landlords simply relied on the Commission to make these arguments) to the effect that minimum income criteria are permitted, even if they are discriminatory against social assistance recipients and other protected groups, as long as they are used in conjunction with other listed practices.

As a result, CERA/SRAC strongly recommend that section 21(3) be repealed, along with O. Reg. 290/98.

However, until these changes are made to the *Code*, it is important that the Commission advance an argument for their correct interpretation, consistent with principles of interpretation of human rights legislation, with the legislative history, the rules of interpretation of ambiguous provisions, and the findings of tribunals, which have considered and applied these provisions.

The above approach, in CERA's view, is consistent with the directions from the Supreme Court of Canada in interpreting human rights legislation. Exemptions that would permit discrimination under certain circumstances must be clear and

unequivocal and must be interpreted as narrowly as possible. Had the legislature wished to permit the discriminatory use of income, credit, reference or co-signor requirements in any manner, it could certainly have done so with clear language. It did not. Rather, it described widespread practices among landlords in terms of information required of tenants, and stated that these are permitted only if the information is used in conformity with the *Code* and also if affirmed that the discriminatory use of such information in order to disqualify social assistance recipients or other protected groups continues to be prohibited.

The Supreme Court has stated that distinctions based on merit, such as considering previous behaviour (in this case previous tenant default or rent paying history) will rarely be found to be discriminatory. On the other hand, distinctions based on prejudice and stereotype about groups, such as the prejudice that social assistance recipients and other low income tenants are more likely to default on their rent, will rarely survive challenge. Nothing in Regulation 290/98 suggests that this general approach to the interpretation of equality rights should be abandoned in the area of housing accommodation in Ontario. Indeed, section 4 of the Regulation and the statements of the government members about their purpose in amending the *Code*, give a clear indication that the Commission should continue to apply this approach. This means that social assistance recipients and other low income applicants should be assessed on the basis of previous behaviour as tenants and not on the basis of unreliable generalizations about those who have low incomes.

2) The legislative history of 21(3) and Reg. 290/98

The legislative history of section 21(3) and of the Regulation establishes the following:

(i) the legislators intended to clarify the existing provisions of the *Code* and did not intend to limit them in any way;
(ii) The legislators intended to authorize the non-discriminatory use of income information but had no intention of permitting the use of MIC;
(iii) The legislators intended to address landlords' concerns that they would be prohibited from asking for income information, credit information, references or co-signors even when such information would be used in a non-discriminatory fashion.

Bill 96: An Act to Consolidate and Revise the Law with respect to Residential Tenancies was introduced for first reading in the Legislature on November 21, 1996. Sections 200(1) of *Bill 96* proposed to amend section 21 of the *Code* by adding what is now section 21(3) of the *Code* and section 200(2) amended section 48 to add section 48 a.1. These sections were eventually passed without amendment and were proclaimed into law on June 11, 1998. On the same day, Regulation 290/98 was proclaimed.

Bill 96 was the subject of 13 days of hearings held in various cities around the province. CERA monitored all of these. The proposed amendments to the *Code* generated considerable opposition and debate and were addressed in the majority of submissions. The Chief Commissioner of the Human Rights Commission and a number of experts, including three of the experts who testified in the *Kearney*[77] case and in several other income criteria cases (Professors Ornstein and Hulchanski and Mr. McIlravey), appeared before the Standing Committee to express concerns about the possible effect of the amendment and the as yet unspecified regulation. While initially indicating a willingness to consider an amendment to address the Chief Commissioner's concern about section 200 of the Bill (section 21(3) of the *Code*) the government members on the Committee became, during the course of the hearings, increasingly insistent that the intent and effect of the amendment was being "misinterpreted" and that the eventual regulation would address the concerns raised by so many experts and groups.

When the Committee first heard submissions on this issue on June 12, 1997, from Professor Ornstein and from CERA, the Parliamentary Assistant to the Minister of Municipal Affairs and Housing, who was responsible for Bill 96, responded as follows:

> At the outset, let me just say categorically, we agree with you. It's certainly not the intent of this bill as it's drafted or when it comes through for third reading to have anything that would promote discrimination against any groups, particularly those who are starting out in the workforce for the first time or are recent newcomers to Ontario.
>
> ... There's nothing in this bill, there's nothing the ministry has ever said that would lead anyone to believe that 30% is being contemplated as a rule. While the numbers that have been crunched here are fascinating, and I accept them at absolute face value, and based on the status quo a 30% rule would be devastating if that was applied indiscriminately, where is anybody proposing a 30% rule?[78]

Mr. Gilchrist proceeded to question whether there would not be uses of income information that would not be discriminatory and would in fact assist an applicant such as a former bankrupt. He raised the concern that since the Act is silent with respect to applications for accommodation, there would be, without the proposed regulations, possible "negative exposure" for landlords who simply ask the

[77] *Kearney*, *supra* note 6.

[78] Legislative Assembly of Ontario, 1st Sess., 36th Parliament, Official Report of Debates, 12 June 1997 at G-3881.

question about income without in any way using a 30% rent to income rule or using it in any other discriminatory fashion.[79]

Subsequently, on June 26, 1997, when responding to a submission about the effect of a 30% rent to income ratio on disabled tenants, Mr. Gilchrist stated that:

> As someone who has a family member who is disabled and a tenant, I can assure you that nothing in this bill will do those things. I must say that your presentation is premised on a giant lie. No one has put in this bill - there is no suggestion that there be a 30% rule.[80]

Increasingly, as the hearings progressed, the government emphasized that the effect of the amendment to section 21 of the *Code* and of the regulations they would draft would only be to clarify that landlords could ask for income information. They stated repeatedly that the amendment and the regulation would not permit the discriminatory use of income information.

Key to the decision not to amend 21(3) as proposed by the Chief Commissioner and others was the contention that the proposed wording already made it clear that only uses of income information, credit, reference requirements, etc. which were non-discriminatory and in compliance with the *Code* were permitted under 21(3). Wayne Wettlaufer, a government member of the Committee, for example, stated that:

> I think there has been a general misconception that we as a government are going to allow discrimination under Bill 96. There is no intent to allow discrimination. We are not changing anything that presently exists in terms of allowing the landlord to ask for income information. All we are doing is clarifying. ... [81]

It was emphasized that s.21(3) requires any of the permitted information such as income or credit to be used "in a manner prescribed under this Act." Carl Defaria, another government member stated the following:

> I would like to comment on the topic that keeps coming up again and again with respect to section 200. I don't know whether it's because the commissioner referred to that section or whether there has been misinformation going on about that section, because the people who made comments today referred to that

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[79]ibid., at G-3881-3882.

[80]Legislative Assembly of Ontario, 1st Sess., 36th Parliament, Official Report of Debates, 26 June 1997 at G-3944-3945.

[81]Legislative Assembly of Ontario, 1st Sess., 36th Parliament, Official Report of Debates, 6 August 1997 at G-4026.

> section and indicated that the section would be used to discriminate. ...
>
> What this section does exactly counteracts that. … the landlord is required to use that information in the manner prescribed under the act. ...
>
> So what this act says is that there will be regulation that will not allow the landlord to use that information in a manner that will infringe the Human Rights Code ... [82]

On August 28, 1997 the Standing Committee considered amendments to Bill 96. Both the Liberals and the New Democratic Parties put forward amendments to sections 36 and 200 of the Bill, which stated that "Landlords may require income information of prospective tenants where such information is not used in a manner which results in discrimination contrary to the Human Rights Code."[83]

Mr. Gilchrist, speaking for the government, stated the following:

> I don't think there's any doubt that both the Liberal and the NDP amendments have embodied within them exactly the same spirit as the wording that's currently in the act.
>
> … But let's get something very clear. It is currently the right of a landlord in Ontario to ask income information. That is an existing right, an existing part of the negotiations that take place every day between landlords and tenants. This bill merely recognizes that fact. It really is quite remarkable to us that people don't see that this is adding a power and adding a right to tenants. Currently the Human Rights Code does not mention income information at all.
>
> You're right that it does specifically say you can't discriminate on the basis of receiving social assistance. As the member knows full well, that section of the Human Rights Code remains in the Human Rights Code. It is not being amended in any way by this piece of legislation, so that right continues to be there. But landlords could have, if it had been their intent, found a way around that prohibition by saying, "No, I didn't discriminate because they are on government assistance; I discriminated because their income is too low."

[82] Legislative Assembly of Ontario, 1st Sess., 36th Parliament, Official Report of Debates, 6 August 1997 at G-4039.

[83] Legislative Assembly of Ontario, 1st Sess., 36th Parliament, Official Report of Debates, 28 August 1997 at G-4348-4349.

> We're now making it very clear that this too will not be allowed. We are saying you must meet the test of reasonableness in all the business dealings between a landlord and a tenant.[84]

Thus, not only direct discrimination against social assistance recipients but also adverse effect discrimination would continue to be subject to the requirements in section 11 of the *Code*.

3) Interpreting Regulation 290/98

Section 1 of Regulation 290/98 makes no explicit reference to the use of MIC. Section 3 of the Regulation authorizes the use of rent to income ratios in determining eligibility for subsidy but does not authorize their use by private landlords. This is consistent with a legislative intent to permit non-discriminatory uses of income information, but to prohibit discriminatory uses of such information. The use of rent-to-income ratios by non-profit housing providers in determining eligibility for subsidy was one of the non-discriminatory uses of income information identified by Professor Hulchanski in his testimony before the Committee.

The terms "rent to income ratios" and "minimum income criteria" were used dozens of times during the hearings into Bill 96. They were the most frequently debated issue during 13 days of hearings. Had the government wished to permit the use of rent to income ratios or MIC in the private sector, in contradiction of its stated intention, it could have identified the use of MIC or rent to income ratios in section 1. In the absence of any express contradiction in the regulations of the stated intention of the legislators, it would be unreasonable to interpret the regulations as permitting the use of rent to income ratios or MIC.

The only reasonable interpretation of Regulation 290/98, and the only one which is consistent with the purposes of the *Code* and the provisions of international human rights law, is that the regulation clarifies that landlords are not liable under the *Code* simply for requiring income information, but ensures, at the same time, that neither income information nor any other information required of applicants may be used in a manner which results in discrimination on any of the prohibited grounds enumerated in section 2 of the *Code*.

Where an allegation of adverse effect discrimination is made with respect to the use of income information, credit or reference requirements, a landlord's policy continues, under Regulation 290/98, to be subject to the test of reasonableness outlined in section 11 of the *Code*. Where a board finds that a particular use of income information constitutes adverse effect discrimination contrary to sections 2 and 11 of the *Code*, the appropriate remedy under section 41 is to order the respondent to cease and desist from using income information in this manner.

[84] ibid., at 4349-4350.

Interpreting the *Code* and the regulation in this manner is not to circumvent the legislative intent but rather to fulfil it.[85]

Under Regulation 290/98 landlords are permitted to require income information where they also require information on credit and reference and they are permitted to require co-signors. They are not, however, permitted to use such information or impose any of these requirements in such a manner that results in discrimination – either directly or through adverse effect. The words "because of" in Ontario's *Code* have been understood, since the *O'Malley* decision, as being inclusive of both direct and adverse effect discrimination. Any use of income information, any application of co-signor requirements, any requirements of landlord reference or credit, which has the effect of disqualifying groups protected under section 2 of the *Code* should be understood to be prohibited under the new regulations.

Newcomers and young tenants, of course, have no landlord references and often have no established credit rating. Most are able to provide some kind of alternative reference if landlords are flexible. As noted by the board in *Kearney*, a clear distinction should be drawn between disqualifying applicants based on a bad credit rating or a history of default, and disqualifying them on the basis of having no previous tenancy or credit history. The former is a distinction based on merit, the latter a generalization about young people and newcomers. Newcomers and young people have a unique interest in proving themselves and in ensuring that their rent is paid on time and in full each month. Disqualifying these applicants or requiring them to provide co-signors (which would frequently be unavailable) because they are first time renters would result in the exclusion of groups such as newcomers and young people. This would be contrary to sections 2 and 11 of the *Code* and would be inconsistent with section 4 of the new regulations.

Different Treatment in the Occupancy of Rental Housing

1) Family Status - Reasonable Children's Noise

A fairly common manifestation of harassment is of families with children who are being harassed, often by other tenants. Commonly, these families are threatened with eviction because of noise that is reasonably to be expected from families with young children: a baby crying at night, young children running, playing, and laughing. Typically, as a result of tenant complaints, landlords threaten families with children with eviction citing provisions from the *Residential Tenancies Act*[86] regarding the interference of enjoyment of the premises by other tenants. The harassment is usually from tenant to tenant, with housing providers

[85] *University of British Columbia* v. *Berg* (1993), 102 D.L.R. (4th) 665 (S.C.C.) [hereinafter *Berg*].

[86] *RTA, supra,* note 47 at. 64 (1).

failing to intervene on behalf of the family with children. Indeed, the end result is usually the service of a notice of early termination of tenancy.

In CERA's experience, housing providers rarely understand that they have a duty to accommodate these families and are instead as quick to respond to complaints over reasonable children's noise as they would complaints over tenants having loud parties late into the night. When advised of the protections afforded by the *Code* and human rights jurisprudence, housing providers typically protest contending that their "hands are tied" and that they are concerned not to risk the loss of other (i.e.: good or better) tenants in the building.

Where landlords agree to attempt resolution of the issue, the responsibility is shifted completely to the families with children and there is no understanding that accommodation in the way of soundproofing, education of other tenants, etc, is actually the responsibility of the landlord.

2) Receipt of Social Assistance

CERA often receive calls from individuals who feel that that their landlord is refusing to provide adequate service because these clients are in receipt of public assistance and, therefore, "less deserving" or "low priority". This issue is particularly troubling when it arises in the context of public, non-profit and co-operative housing providers. Many residents in subsidized apartments complain that they are treated with less respect and that their maintenance and other concerns are acted upon with less urgency than residents of market rent units in the same complex. Unless these clients can find other tenants in a similar situation who are willing to come forward – or other tenants who are not receiving assistance or who live in market rent units and have had very different experiences – there is little these individuals or CERA can do to challenge the housing provider under the *Code*.

Commonly, the "low priority" related to services accorded individuals in subsidized units is accompanied by conduct by landlords and property managers that is demeaning and threatening, particularly when the individuals are women. Constant and undeserved threats related to unit cleanliness and threats to call child welfare authorities are commonplace. Unfortunately, because the harassment is often related to stereotypes and vague references to low-income, it can be quite difficult to prove as being contrary to the *Code.*

3) Harassment because of Mental Disability

CERA staff also see conflict between the "substantial interference" provisions of the *RTA* and the *Code* with respect to tenants with mental illness. The characteristic impact of the application of the *RTA* provisions to persons with mental disability, even when the disability is in no way harmful to others, is that they must be evicted, as they are undesirable.

4) Racial Harassment

In addition to the above, racial harassment is quite common. In CERA's experience, dealing with racial harassment, like dealing with racial discrimination, is very difficult to prove because it is often subtle – though unremitting in nature. It usually manifests itself as comments related to being difficult, loud, intimidating, etc., both for racialized men and women. In this regard, it is rarely direct (though this happens too), but rather associated with stereotypical attitudes and assumptions about racialized persons and their "expected" behaviour. Also, like other forms of harassment, access to services and basic unit maintenance is more difficult to obtain. Where other tenants can access service from a landlord on an informal basis, racialized tenants are made to follow official protocol to get anything done. In CERA's experience, tenants dealing with racial harassment are often afraid to confront the harasser for fear of "legitimizing" the stereotypical assumptions related to being difficult or being accused of using the "race card" for special treatment.

5) Sexual Harassment

Sexual harassment by landlords of women is also commonplace. It is more frequent, however, when they economically vulnerable. As noted above in the above section on sex discrimination, the harassment typically takes the form of a landlord "offering" security of tenure or a break in the rent in exchange for sexual favours, especially when women are struggling financially and fall into, or are at risk of falling into, rental arrears. Where single mothers are concerned, landlords are often aware of the potential threat women face in respect of the apprehension of their children by the state should they lose their housing. In CERA's observations, while the harassment generally begins as "friendly" offers, it typically becomes intimidating and threatening if women reject the advances. This, of course, then exacerbates the already vulnerable position of women facing this type of discrimination.

VII. CONCLUSION

(a) Based on the information the Commission has provided, and your knowledge of rental housing issues in Ontario, are there any other human rights issues in housing, discriminatory practices or systemic barriers you would like to tell the Commission about?

(b) Do you have any other comments regarding what the Commission or other bodies can do to raise public awareness, promote human rights and develop policy positions in the area of rental housing?

Lack of Maintenance in Low-Income Neighbourhoods is a Systemic Human Rights Violation

While CERA recognizes that individual maintenance claims constitute violations under the *Residential Tenancies Act* and not the *Code*, it is our perspective that the **systematic failure to maintain buildings** inhabited primarily by low-income communities and groups identified by *Code* grounds constitute systemic violations of the *Code* and contribute to "poor bashing".

CERA receives telephone calls all the time from individuals who require maintenance in their apartments, but who are unable to get their landlord or housing provider to complete repairs or who are afraid to demand that problems be fixed for fear of retaliation by the landlord, being labelled a nuisance and/or even threatened with eviction. The question about who is responsible for ensuring that apartments are maintained and what people can do when there are no vital services (water, heat, etc.) also regularly comes up at CERA's human rights and housing workshops throughout the province. A pattern is emerging: most of the tenants who complain of lack of maintenance issues reside in buildings or neighbourhoods that are typically populated by low-income communities. More specifically, it is clear that those most affected are members of *Code* protected groups and people who face intersecting forms of discrimination.

In one "private for profit" building in Toronto in the Parliament and Wellesley area (St. Jamestown) this past winter, CERA staff were advised of approximately 10 people who were without heat.[87] CERA staff were further advised that no one was willing to complain to the landlord for fear of being labelled a nuisance and fear of retribution. An informal mention of the problem (by a tenant) to the property management office was ignored. Calls to the city's property standards office were of little assistance, as formal complaints had to be made in writing to the landlord – and denied – before the city would get involved. This was despite a call from CERA to the city to advise that the problem was affecting numerous families in the building and a request for an inspection based on our organization's involvement so as to allow the residents of the building to remain anonymous. The city's requirements, in CERA's opinion, failed to accommodate the very real fears of those affected by the problem (of retaliation) and also likely pose significant challenges for those with language barriers.

The failure of landlords to maintain basic property standards also results in the victimization of poor people – and often women. As the Commission is no doubt aware, the media is regularly reporting on stories of toddlers falling off balconies and out of windows – often to their tragic deaths. While the problem is typically that maintenance requests for repairs of broken screens and balcony railings

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[87]One individual contacted CERA, and on investigation, discovered that others in the building who were friends and acquaintances were facing the same problem.

have been ignored, the landlords are not vilified for their failure to respond to such requests (resulting in people being forced to live in unhealthy and unsafe conditions), but the families and/or caregivers are for failing to “properly” care for their children.

From CERA’s perspective, the systemic failure of landlords – large and small – to maintain the most basic living standards for *Code* protected groups is a systemic human rights violation. The result of the failure is that low-income individuals and families are denied the right to enjoy equality with respect to their occupancy of accommodation. Further, that the violations in this regard are the result of a multiplicity of actors, including government. To this end, while private for-profit landlords have the flexibility of raising rents and applying rental increases to ensure proper maintenance, social housing providers do not have the same opportunity in that they are primarily reliant of cash infusion from municipal, provincial and federal levels of government for maintenance and building operations. Where private landlords are concerned, CERA believes that the unresponsiveness is related to the unwillingness to sacrifice profits, discriminatory attitudes towards their own, racialized tenants, and a willingness to exploit the tenuous nature of the tenancies of the building residents. As M.S. Mwarigha stated in his evidence before a Board of Inquiry dealing with racial discrimination and income criteria (*Newby and Sinclair* v. *Morris A. Hunter Investments* (2001) 41 C.H.R.R. D/98 (Ont. Bd. Inq):

> The low-income tenant communities are known in the landlord community and among the public as being largely visible minority and are referred to as "ghettoes". They are unfairly associated with crime, bad parenting, declining schools standards and lower property rates. As a result of these stereotypes landlords often do little to maintain these "ghettoes" which then reinforces the stereotypes attached to these communities. The quality of the housing is then confused in public attitudes with the living habits of the residents and increasingly negative images are fostered about low-income visible minority tenants.

It must be noted that where social housing providers are concerned, at least some blame much of the blame for the violation lies at the feet of government and its failure to ensure that vulnerable communities are free from discrimination through an appropriate allocation of resources to social housing providers. This is consistent with the framework adopted in this paper and with international human rights obligations outlined above. The government has a:

> … multi-dimensional obligation to realize the right to adequate housing, conceptualized by the UN Committee on Economic, Social and Cultural Rights as an obligation to “respect, protect, facilitate and provide” … to take reasonable measures, **to the maximum of available resources**... (see Section on Social Housing).

And further that

> The substantive right to the equality in housing … places obligations on a myriad of actors – whose action or inaction may determine whether *Code* protected groups actually experience equality in the occupancy of accommodation … A substantive approach to equality in housing must recognize diverse obligations on a variety of actors, and create a "culture of human rights", which ensures that everyone acts in accordance with the recognition of the right to the equal enjoyment of the right to adequate housing. (See: Key Principle 6 in the Introduction: the Right to Equality in Housing Places Obligations on a Multiplicity of Actors).

Concluding Remarks

In the introduction, we suggested that there are two critical axes to the human rights crisis in Ontario. The first was the fact that discrimination in housing is generally not understood and is certainly inadequately addressed, representing less than 4% of the Commission's caseload. The second was the fact that the substantive right to adequate housing as protected under international human rights law has been treated as being largely irrelevant to the *Code* and beyond the scope of equality rights legislation. The idea that the real solution to homelessness is simply a need for increased supply of housing has exacerbated both of these problems, contributing to the myth that discrimination is really just a problem of scarcity of housing, and that the problem of homelessness has little to do with inequality and discrimination.

It is clear, from the above review, however, that the two axes of human rights work actually converge into one unified approach. A primary reason that discrimination in housing has not been adequately addressed is that systemic claims addressing the most significant barriers facing disadvantaged groups invariably link to issues related to poverty. Discrimination claims therefore often rely on a recognition of substantive "social rights", requiring positive obligations to address needs of protected groups in a substantive or programmatic way.

Similarly, one reason that the right to adequate housing has not been sufficiently incorporated into the interpretation and application of the *Code* is that the equality dimensions of the right to adequate housing have too often been ignored. Violations of the right to adequate housing in Ontario must be understood broadly as a serious manifestation of growing inequality and social exclusion of *Code* protected groups and failures by governments and other actors to accommodate their housing related needs. With this understanding, the two axes of human rights work in housing can properly be seen as one.

Combating discrimination in housing under the new human rights regime in Ontario will mean challenging the marginalization of housing and poverty issues

within Canadian human rights institutions. We will need to relinquish the formal equality paradigms that have often been applied so as to deny hearings to those facing discrimination in housing. When CERA began its work in 1986, social assistance recipients reporting discrimination by landlords were routinely turned away by Commission staff on the ground that it was reasonable to refuse to rent to someone on social assistance for the reason that they have a low income and are, therefore, more likely to default. While the situation has certainly improved since then, it often seems that the largest battle for protected groups has been to ensure that decision-makers take housing provisions in the *Code* seriously.

The *Code* remains a powerful statement of human rights in housing. There is no reasonable and bona fide justification to any form of direct discrimination in housing. There is a clear statement in section 11 of positive obligations to accommodate the needs of all protected groups in housing. There is explicit protection for social assistance recipients and strong, unprecedented jurisprudence on the intersectionality of poverty with other prohibited grounds.

The time is overdue to apply the *Code* rigorously and strategically to address the unprecedented human rights crisis in housing in Ontario. The Commission can play a critical role in this endeavour. CERA and SRAC look forward to a new era of collaboration and mutual support with the Commission in all areas of our work, particularly in public education and in developing effective challenges to systemic discrimination and inequality.

We thank the Commission for the opportunity to share our views on the important issues raised in its Consultation and Background papers.

Submission to the Ontario Human Rights Commission on

HUMAN RIGHTS AND RENTAL HOUSING IN ONTARIO

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