

Key Amendments Moved by Cheri DiNovo, MPP, to Create an Ontario Housing and Homelessness Plan, Ensuring the Right to Adequate Housing and Reducing and Eliminating Homelessness

that section 2 of Schedule 1 to the Bill be amended by adding the following definition:

“accessible housing” means housing that accommodates the needs of persons with disabilities, as required by the *Human Rights Code* and by the Convention on the Rights of Persons with Disabilities, based on the principles of identifying and eliminating obstacles and barriers to accessibility and of providing access to appropriate support services for community living;

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It is critical that Ontario’s housing and homelessness plan address the unique needs of persons with disabilities, including supports necessary for community living. Currently Bill 140 makes no mention at all of the critical situation facing persons with disabilities.

The Mental Health Commission of Canada reports that between “a quarter and a half of the absolutely homeless suffer from mental illness.”

A survey of homeless people in Toronto found that 75% had a combination of physical and mental health disabilities (Shartal, Cowan, Khandor & German, 2006)

Studies have shown that people with intellectual disabilities are also over-represented among the homeless, and many are denied the choice to live in the community by the lack of necessary support.

The UN Special Rapporteur on Adequate Housing, Miloon Kothari, emphasized, in his recommendations for a housing strategy, that it provide adequate support services for persons with disabilities

that section 2 of Schedule 1 to the Bill be amended by adding the following definition:

“affordable housing” means housing that is available at a cost to a household, after taking into consideration any financial assistance available to the household, that does not compromise the household’s ability to meet other needs;

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This is the accepted definition of affordability under international human rights law.

The UN Committee on Economic, Social and Cultural Rights stated that the obligation to ensure that housing is affordable means that **“Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised”**. (General Comment No. 4 on the Right to Adequate Housing)

This is also the definition of affordable housing contained in **Bill C-304**, the federal housing strategy bill that had the support of the Liberals, the NDP and the BQ. In Bill C-304 affordable housing is “means housing that is available at a cost that does not compromise an individual’s ability to meet other basic needs, including food, clothing and access to health care services, education and recreational activities.”

While entitlement to subsidy may be based on percentage of income toward rent, as proposed in other amendments, this more universal definition provides a realistic goal for a housing strategy to ensure the right to adequate and affordable housing consistent with international human rights.

that section 2 of Schedule 1 to the Bill be amended by adding the following definition:

“right to adequate housing” means the right to adequate housing as guaranteed under international human rights law ratified by Canada, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities;

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Meaning

The *International Covenant on Economic, Social and Cultural Rights* states, in article 11,

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing ...

The *Convention on the Rights of Persons with Disabilities* states in article 28 that:

States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing

It is recognized under international law that many components of the right to adequate housing are subject to available resources, and must be implemented progressively, over time. Canadian governments have an obligation to

... to take steps to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Why it is Critical to Include a Commitment to the Right to Adequate Housing

As was noted in the Senate Report “*In from the Margins: A Call to Action on Poverty and Homelessness*” it is important that legislation in Canada make explicit reference to rights to which they are committed under international human rights law. The Senate Sub-Committee, chaired by Art Eggleton, recommended that the government:

“In recognition of both Canadian obligations under international human rights law, and their importance in claiming access to appropriate programs and services, explicitly cite international obligations ratified by Canada in any new federal legislation or legislative amendments relevant to poverty, housing and homelessness”

Ontario has the same obligations under international human rights law as the federal government, and provincial legislation should also make references to rights as protected under international human rights law in areas of provincial jurisdiction.

As Miloon Kothari, the Special Rapporteur stated in his letter to the Minister:

“ a central focus of my concerns and recommendations addressed the need for national and **provincial** housing strategies, based on legislative recognition of the right to adequate housing”

The Ontario Human Rights Commission recommended, in its *RIGHT AT HOME Report on the consultation on human rights and rental housing in Ontario* following its extensive consultations on housing:

THAT the Ontario legislature pass a law such as Private Member’s Bill 47, An Act to establish the right to adequate housing as a universal human right, to recognize that every person has a right to adequate housing in accordance with Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

THAT the Government of Ontario provide a substantive response that outlines how it will address the concerns raised by the Special Rapporteur on affordable housing, and post such a response on its website.

THAT the Government of Ontario work with community organizations and municipalities to identify ways to apply a human rights approach to reducing and preventing homelessness in the province.

that subsection 4 (1) of Schedule 1 to the Bill be amended by adding the following clauses:

- (a.1) complies with Ontario’s obligations to respect, protect, promote and fulfil the right to adequate and affordable housing within available resources and by all appropriate means;**

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[Bill C-304](#) the federal housing strategy bill, also uses the terms “respect, protect, promote and fulfill”. These are accepted terms in international human rights to describe the obligations of governments with respect to social and economic rights such as the right to adequate housing. They have been used in General Comments adopted by the Committee on Economic, Social and Cultural Rights to define obligations regarding the right to adequate housing, food, health, social security, equality between women and men.

The obligations to respect, protect and fulfil the right to housing have been defined as follows:

- The obligation to respect requires States to refrain from interfering with the enjoyment of the right to housing. Thus, the right to housing is violated if the State engages in arbitrary forced evictions.
- The obligation to protect requires States to prevent violations of rights by third parties. So, for example, the government must protect tenants from arbitrary evictions or from discrimination.
- The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of the right to housing. So failing to ensure that the shelter component of social assistance or cut-backs to social housing programs have been identified as violations of this component of the right to housing in Ontario.

(a.2) ensures that housing that is both accessible housing and affordable housing is available to persons with disabilities;

In its *Right at Home Report*, the Ontario Human Rights Commission reported that “the failure to accommodate, combined with the lack of accessible housing alternatives, may mean that tenants [with disabilities] cannot live independently and are forced to live with family or in nursing/care homes, in violation of the Code and of human dignity.”

Miloon Kothar, at para. 91 of his Mission Report, emphasized the need for “increasing shelter allowances and social assistance rates to realistic levels, and providing adequate support services for persons with disabilities”

(b.1) provides a housing benefit for all low-income Ontarians who pay more than 40 per cent of their income for rent;

The Special Rapporteur recommended that governments in Canada “consider providing subsidies including housing allowances or access to other cost-effective ways in order for low-income households to meet their housing needs.”

Ontario Housing and Homelessness Plan

6.1 (1) The Minister shall, within one year after the coming into force of section 6, convene a conference of representatives of the Government of Canada, the Government of Ontario, Ontario municipalities, Aboriginal communities, non-profit and private sector housing providers and civil society organizations, including those that represent groups in need of adequate housing, in order to develop the principles and requirements of an Ontario Housing and Homelessness Plan to reduce and eliminate homelessness and to respect, protect, promote and fulfil the right to adequate and affordable housing in Ontario.

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(2) The Ontario Housing and Homelessness Plan must,

- (a) include clear targets and timelines to reduce and eliminate homelessness and implement programs to ensure that these commitments are fulfilled;**
- (b) give priority to ensuring the availability of adequate housing to those without housing and to groups particularly vulnerable to homelessness, including groups facing discrimination;**
- (c) include a plan to ensure that accessible housing is available to all persons with disabilities;**
- (d) include processes for,**
 - (i) the independent review of complaints about possible violations of the right to adequate housing,**
 - (ii) addressing and reporting such complaints, and**
 - (iii) reviewing and following up on concerns and recommendations from United Nations human rights bodies with respect to the right to adequate housing relevant to Ontario.**

Compliance at local level

(3) Every service manager shall ensure that its plan to address housing and homelessness required under subsection 6 (1) reflects and is consistent with the Ontario Housing and Homelessness Plan.

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This is the critical amendment to comply with the recommendations of UN bodies, and the Special Rapporteur.

The Special Rapporteur made the following recommendations:

90. The Special Rapporteur calls for Canada to adopt a comprehensive and coordinated national housing policy based on indivisibility of human rights and the protection of the most vulnerable. This national strategy should include measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms.

He called for

“a national strategy on affordable housing that engages all levels of government” and noted that it will “require permanent and adequate funding and legislation set within a rights-based framework.”

Miloon Kothari has written a letter in support of these amendments, noting that the critical components of a housing strategy are that it:

- prioritize the needs of groups most vulnerable to homelessness and discrimination;
- include firm goals and timetables for the elimination of homelessness and the realization of the right to adequate housing;
- provide for independent monitoring and review of progress and provide for consideration of complaints of violations of the right to adequate housing; and
- ensure meaningful follow-up to concerns and recommendations from UN Human Rights Bodies.

Similarly, the Ontario Human Rights Commission, has called for Ontario to adopt a housing strategy to eliminate homelessness:

THAT the Government of Ontario, in the absence of a national housing strategy, adopt a provincial housing strategy. Such a provincial strategy should include measurable targets and provision of sufficient funds to accelerate progress on ending homelessness and ensuring access of all Ontarians, including those of

limited income, to housing of an adequate standard without discrimination. It should also take into consideration the needs of Aboriginal people, people with disabilities including mental illness, women experiencing domestic violence, lone parents, immigrants and newcomers and other people living in poverty or with low incomes who are identified by Code grounds.

Leilani Farha of CERA pointed the Standing Committee to a long history of urgent recommendations from UN Human Rights bodies urging governments to introduce a rights-based housing and homelessness strategy.

For example, the UN Committee on Economic, Social and Cultural Rights in (2006) stated

62. The Committee urges the State party to 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.

As noted by Bruce Porter of the Social Rights Advocacy Centre in his presentation to this Committee

“A cornerstone of minimal compliance with the right to adequate housing under international human rights law is the adoption of a comprehensive and reasonable strategy to eliminate homelessness and implement the right to adequate housing over time. Most advanced countries now have housing and homelessness strategies that include clear goals and timetables for the reduction and elimination of homelessness. “

Mr. Porter referred the Committee to housing and homelessness plans in a number of comparable jurisdictions which set realistic goals and time lines to reduce and eliminate homelessness.