

Ensuring and Assessing Compliance with the Right to Adequate Housing in the Toronto Housing Charter

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A. The legal obligations affirmed in the Toronto Housing Charter

The Toronto Housing Charter – Opportunity for All affirms the City of Toronto’s recognition of adequate housing as a fundamental human right, grounded in international law. It specifically references International Covenant on Economic, Social and Cultural Rights (“ICESCR”), to which Canada is a State Party and commits to the progressive realization of the right to housing in accordance with obligations under the ICESCR.

The progressive realization of the right to housing under ICESCR is a binding legal obligation under international law to utilize “all appropriate means, including legislation” and “the maximum of available resources” to achieve progressively the full realization of the right to housing. As affirmed in the Toronto Housing Charter, this obligation applies to all orders of government, including municipalities, within their areas of jurisdiction and commensurate with their capacities.

The status of these binding international human rights obligations in domestic law is a more complex question that is evolving in domestic courts. Ratified international human rights treaties are not directly enforceable in domestic courts in Canada unless they have been incorporated in legislation, but they are important sources for the interpretation of domestic law, including the rights in the Canadian Charter of Rights and Freedoms, which are interpreted according a “presumption of conformity” with Canada’s international human rights obligations.

Under international law the right to adequate housing is considered to be interdependent with the right to life and other civil and political rights, and under international law the right to life requires states to adopt positive measures to address homelessness and ensure access to housing. The extent to which this is also true of the right to life in section 7 of the Canadian Charter remains unsettled. Homelessness has also been recognized as a prohibited ground of discrimination under international law and it is unsettled whether the same is true under section 15 of the Charter.

Another issue that is unsettled is the legal status of international commitments when they are incorporated into legislation or into municipal charters or plans as commitments rather than as enforceable rights. Where commitments to reduce carbon emissions in accordance with the Paris Agreement have been incorporated into legislation and regulations, the Ontario Court of Appeal has found that failure to meet those commitments

may be challenged if they result in violations of the right to life and security of the person under section 7 of the Charter. Failures to meet statutory commitments to eliminate homelessness or to ensure access to shelter or housing in the National Housing Strategy Act or in municipal plans or charters may be similarly reviewed for their impact on Charter rights.

A question that has been raised by NGO's in the context of reviews of Canada's compliance with the right to housing has been whether governments should promote interpretations of Charter rights that are consistent with international human rights obligations rather than, as has been the case to date, arguing that the Charter does not impose obligations to address homelessness or climate change. For municipalities in particular, it would seem to be advantageous to establish accountability of provincial and federal governments to their obligations under international law. Municipalities might well hope that appellate courts will clarify that the Charter imposes shared obligations on all orders of government in Canada to address homelessness by all appropriate means and by applying the maximum of available resources.

Understanding the “reasonableness” standard for the progressive realization of the right to adequate housing

When the United Nations Human Rights Council was developing a new complaints procedure under the ICESCR, a key issue in the debate was how to assess compliance with the obligation of progressive realization as a legal standard reviewable by courts and human rights bodies. Some states, most notably Canada and the U.S. insisted that progressive realization is a policy aspiration that should not be subject to adjudication by courts or human rights bodies. That view was rejected by the UN Human Rights Council and the UN General Assembly when it adopted the Optional Protocol to the ICESCR.

A key participant in these debates was former Supreme Court of Canada Justice Louise Arbour, who was then the UN High Commissioner of Human Rights. Justice Arbour supported proposals based on jurisprudence from the South African Constitutional Court that a standard of “reasonableness” should be applied in assessing compliance with progressive realization. She noted that the reasonableness standard was already familiar to courts, in the context of reasonable accommodation of the needs of persons with disabilities.

As the rights-based approach based on the right to housing has gained traction in recent years, particularly after the federal government affirmed this approach in the National Housing Strategy Act, advocates have continued to face resistance from those who insist that progressive realization is not a legal standard but rather a policy aspiration.

Before considering what is entailed in the reasonableness review of compliance with progressive realization of the right to adequate housing, it may be helpful to follow Justice Arbour's advice by drawing on what lawyers and courts are already familiar with, the application of a reasonableness standard to the positive duty to accommodate the needs of persons with disabilities.

How Canadian courts apply reasonableness in assessing compliance with the positive duty to accommodate disability

The following elements recur in Supreme Court of Canada and appellate jurisprudence as the key elements of a compliance framework for the accommodation of disability

Canadian courts do not treat accommodation as an abstract moral duty. They treat it as a structured inquiry into whether the responsible party, institution or government has acted reasonably, proportionately, and with due regard to dignity, up to a defined threshold defined by the "undue hardship" standard.

In the key Supreme Court of Canada systemic cases on disability: *Meiorin*, *Eldridge*, *VIA Rail*, and *Moore*, the following analytical factors recur.

1. Framing the service and the affected interest

Courts require decision-makers to:

- identify the actual public service or benefit at issue (not an artificially narrow proxy);
- assess whether affected persons can access that service meaningfully and with dignity, not merely formally.

2. Identification of systemic barriers (effects-based analysis)

Accommodation analysis proceeds on the basis that:

- facial neutrality is irrelevant;
- adverse effects discrimination is sufficient;
- systemic design choices (standards, eligibility rules, funding envelopes) are reviewable.

3. Consideration of accommodation options (good-faith, inclusive design)

Decision-makers must demonstrate that they:

- turned their minds to the positive obligation to accommodate and/or to alternatives to an existing policy which fails to meet those obligations;
- explored modifications, exemptions, phased approaches, pilots, or partial solutions;
- considered whether inclusive design at the outset could have avoided exclusion.

4. Dignity, autonomy, and substantive equality

Accommodation is not assessed in technical or financial terms. Courts consistently ask whether the proposed or refused accommodation:

- respects the inherent dignity of affected persons;
- avoids reinforcing stigma, dependency, or marginalization;
- promotes participation and inclusion.

E. Undue hardship as a standard and a justification

Undue hardship is most often referred to as a potential justification of a failure to accommodate disability but it also functions as a standard to be met in an ongoing fashion, for example, in moving forward in ensuring accessibility of public transportation.

As a justification, undue hardship

- is exceptional, not routine;
- must be proven with evidence, not assertion;
- typically considers cost, funding, safety, and operational viability;
- is assessed in light of the entire enterprise, not a single budget line.

Courts expect governments to consider:

- external funding sources;
- reallocation or prioritization within existing budgets;

- proportional rather than absolute cost.

In addressing systemic issues, courts and tribunals have required that accommodation measures be implemented over time, through reallocation of resources and the development of implementation plans. The leading example of such an implementation plan is the negotiated five year implementation plan for access to necessary services and housing for persons with disabilities to live in the community in the case of the Disability Rights Coalition v. Nova Scotia.

F. Process, transparency, and record

Courts scrutinize:

- whether the government kept records of its analysis;
- whether affected communities were consulted;
- whether decisions were reviewed or revisited over time.

Procedural failures often undermine claims of undue hardship.

PART II: Reasonableness Review for Compliance with Progressive Realization of the Right to Adequate Housing

Similar to the duty of reasonable accommodation of disability, reviews of compliance with the obligations under the ICESCR to realize progressively the right to adequate housing by adopting measures, applying “all appropriate means, including legislation” and “the maximum of available resources” have been based on a standard of “reasonableness”.

Although somewhat different from the standard of reasonable accommodation as it applies to individuals, this standard is quite similar to the standard courts in Canada and international human rights bodies have applied to the duty to accommodate disability through programs, policy and budgetary allocations.

When the Optional Protocol was drafted, proposals to require a highly deferential review—such as a broad “margin of discretion”—were rejected. Instead, the CESCR was mandated to assess whether the steps taken by a State are reasonable, while recognizing that States may choose among different policy options.

The reasonableness standard in the OP-ICESCR, drawn from the South African Constitutional Court's decision in *Grootboom*, examines how decisions are made, whom they affect, and whether they are consistent with the commitment to fully realize the right in question. While Canada has not ratified the OP-ICESCR, the standard of reasonableness is now accepted as the standard for assessing compliance with binding obligations under the ICESCR that apply to all state parties, regardless of whether they have ratified the OP-ICESCR.

In applying this standard, the CESCR has considered whether measures are deliberate, concrete, and targeted toward realizing rights; whether they are non-discriminatory and non-arbitrary; whether a plan is in place with clear goals and timelines that provide for a reasonable timeframe commensurate with available resources and capacity; and whether they address the needs of disadvantaged or marginalized groups. Meaningful participation, transparency, coordination across levels of government, and access to monitoring and remedies are treated as essential components of a reasonable approach.

The CESCR has also adapted proportionality analysis from civil and political rights in the adjudication of ESC rights, even though it is not named explicitly in the Optional Protocol. In its OP-ICESCR jurisprudence, which has been largely framed in evictions cases, the CESCR assesses whether measures that limit or delay enjoyment of rights pursue a legitimate objective, are rationally connected to that objective, impair rights as little as possible, and do not impose excessive harm—particularly on vulnerable groups. This is reflected in the Committee's insistence that States adopt the least rights-restrictive option and require heightened justification for retrogressive measures or policies with severe impacts on dignity, security or life.

Claims of limited resources do not end the inquiry. Reasonableness requires States to show that budgetary choices were made transparently, prioritized Covenant rights, considered alternatives, and protected minimum essential levels, especially in situations of risk or crisis.

Overall, the reasonableness standard ensures that progressive realization remains a binding legal obligation. It allows governments policy flexibility, but only within limits set by human rights norms, proportionality, participation, and accountability to those whose rights are at stake.

B. Toward a Checklist for Assessing Compliance with the Commitment to the Progressive Realization of the Right to Adequate Housing in the Toronto Housing Charter

Based on the above, a checklist for compliance the right to adequate housing to assist City Council, Committees, and senior staff in ensuring that City decisions, policies, programs, by-laws, budgets, and enforcement practices comply with the Toronto Housing Charter, might be structured along the following lines:

STEP 1 — What is being reviewed?

Is the subject of review a particular decision, policy or program or is it a review focused on a failure to address a particular need or systemic issue?

If a particular decision or policy is being reviewed, does that focus obscure broader issues of unaddressed needs or systemic issues that should be included in the review?

STEP 2 -- Identifying the Components of the Right to Adequate Housing that are engaged:

The Toronto Housing Charter affirms the right to housing that is:

- ☐ Safe, secure, and affordable
- ☐ Maintained in a state of good repair
- ☐ Accessible and responsive to the needs of marginalized groups
- ☐ Respectful of cultural identity and ways of life
- ☐ Located within a complete and inclusive community
- ☐ Free from discrimination and arbitrary requirements

Briefly note which of these are engaged and how.

STEP 3 — Have we taken deliberate and concrete steps to advance the right to housing?

Consider whether the decision:

- ☐ Is the result of a deliberate policy choice designed to advance the right to adequate housing
- ☐ Takes concrete action rather than merely expressing intent
- ☐ Is targeted toward improving housing outcomes or preventing harm
- ☐ Defines outcomes to which the City can be held accountable

STEP 4 — Have we used all appropriate municipal tools?

Have the following been considered where relevant?

- ☐ By-laws or regulatory measures
- ☐ Planning or zoning tools
- ☐ Use or disposition of City land
- ☐ Funding or procurement conditions
- ☐ Service design or delivery changes
- ☐ Coordination across City divisions
- ☐ Collaboration with other governments or partners

If some potential tools were not used, briefly explain why.

STEP 5 — Were affected residents meaningfully engaged?

- ☐ People with lived experience of housing insecurity or homelessness were consulted
- ☐ Engagement occurred early enough to influence decisions
- ☐ Barriers to participation were addressed

☐ Feedback influenced the final design, or reasons were given

Briefly note what changed (if anything) as a result of engagement.

STEP 6 — Does the decision respect dignity, equality and the right to security?

Consider whether the decision:

☐ Promotes dignity, autonomy, and safety for diverse individuals and communities?

☐ Avoids stigma, blame, or punitive treatment

☐ Addresses the needs of identified marginalized and disadvantaged groups

☐ Prioritizes those most in need

If there are disproportionate negative impacts on particular groups, note mitigation measures.

STEP 7 — Does this decision risk eviction, displacement, or homelessness?

☐ Yes

☐ No

If Yes, confirm that:

☐ Less harmful alternatives were considered

☐ Affected individuals and/or groups were engaged to consider and arrive at solutions

☐ Safeguards and positive measures are in place to prevent homelessness and ensure access to shelter/housing/supports

☐ Timing or tailoring was considered to reduce harm

STEP 8 — Has resource allocation been consistent with housing as a fundamental human right and the maximum of available resources standard?

Confirm that:

- ☐ Available City resources were identified
- ☐ External funding or partnerships were explored
- ☐ Impacts on the right to housing were weighed against other priorities
- ☐ Claims of infeasibility are supported by evidence and subject to review
- ☐ Low-cost or interim measures were considered

STEP 9 — Does the decision/action/inaction support progressive realization?

- ☐ It contributes to long-term improvement in housing conditions
- ☐ It does not represent an unjustified step backward
- ☐ It includes timelines, benchmarks and review mechanisms

STEP 10 — Record and accountability

- ☐ Housing Charter impacts documented
- ☐ Reasons provided in accessible language
- ☐ Monitoring or follow-up identified

Overall assessment:

- ☐ Advances the right to housing
- ☐ Neutral
- ☐ Risks undermining the right to housing (mitigation required)

C: Toward a Review Framework for Compliance with the Right to Adequate Housing

The Ombudsman's Office plays a critical role in ensuring that City policies, programs, and decisions are consistent with the Toronto Housing Charter and the City's commitment to treat housing as a fundamental human right.

The following framework may provide guidance for reviewing specific policy areas or decisions, assessing compliance with the right to housing, and making recommendations for corrective or progressive action. It is important, however, that the review assesses the impact not only of existing policies or past decisions but that it consider the circumstances of rights-holders to assess whether the City has responded reasonably and proportionally to these circumstances.

1. Standard of review: Reasonableness

The Ombudsman's role is not to:

substitute its own policy preferences;

select among competing housing strategies; or

second-guess technical or budgetary judgments per se.

Consistent with international human rights law, the Ombudsman should respect the City's competence to choose among policy options where those choices meet a standard of reasonable and are rights-compliant.

2. What reasonableness review requires

Reasonableness review applies both to action and inaction

The Ombudsman assesses whether the City has demonstrated that:

- steps taken were deliberate, concrete, and targeted;
- discretion was exercised in a manner that is consistent with the commitments in the Toronto Housing Charter;
- decisions were compatible with human dignity, security and equality;
- affected groups were meaningfully engaged;

- resource constraints were evidenced and justified, in accordance with the priority that must be accorded to fundamental human rights;
- priority was given to disadvantaged and marginalized groups;
- less rights-restrictive alternatives were considered;
- the decision fits within a coherent and progressive housing strategy capable of eliminating homelessness and realizing the right to adequate housing

3.1 Identification of housing rights engaged

The review will assess impacts using the adequacy framework developed under international law:

- security of tenure
- affordability
- accessibility
- habitability
- availability of services
- location
- cultural adequacy
- The focus is on lived effects, not formal classifications.

3.2 Assessment of steps taken

Key questions:

- Were concrete measures adopted, or was the issue deferred?
- Were all appropriate municipal tools considered?
- Was reliance placed excessively on existing policy or legislation?
- What key steps or measures could have been considered or adopted that were not?.

3.3 Non-discrimination and prioritization

The review will assess:

- whether impacts disproportionately affect marginalized groups;
- whether mitigating or targeted measures exist;
- whether the most precarious situations were prioritized.

3.4 Participation and dignity

The review will assess

- the quality and timing of engagement;
- whether lived experience informed the decision;
- whether dignity concerns were substantively addressed.

3.5 Proportionality in eviction or displacement contexts

Where displacement or eviction is implicated, the Ombudsman should assess:

- legitimacy of the objective;
- necessity and least-restrictive means;
- severity of harm;
- adequacy of safeguards to prevent homelessness
- attention to differential impacts on particular groups (e.g. children, persons with disabilities).

3.6 Resource justification (“maximum of available resources”)

The Ombudsman does not set budgets, but should examine whether:

- resources were fully mapped;
- trade-offs were justified in light of housing’s centrality to dignity;
- external or additional funding options were pursued;
- claims of infeasibility are supported by reliable evidence.

4. Recommendations and outcomes

Where non-compliance is identified, the review may recommend:

- immediate corrective measures (e.g., suspension, mitigation, reversal);
- development or revision of policies or by-laws;
- targeted protections for affected groups;
- improved engagement and accountability mechanisms;
- timelines and benchmarks for compliance.
- Ongoing engagement strategies

5. Institutional dialogue and accountability

The review should contribute to:

- an ongoing dialogue between Council, staff, and residents;
- improved clarity on housing-rights standards;
- stronger internal capacity for Charter-compliant decision-making.