

Submission of the Ontario Human Rights Commission to the Ministry of Municipal Affairs and Housing's long-term affordable housing strategy

December 23, 2009

Introduction

The international community has long recognized that housing is a fundamental and universal human right that must be protected in law. Both the *Universal Declaration of Human Rights*¹ and the *International Covenant on Economic, Social and Cultural Rights* (the *ICESCR*)² recognize the right to housing.³ Other international treaties that have affirmed the right to housing include the *International Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *Convention on the Rights of the Child*.

Canada has ratified all of these treaties, and in doing so, has endorsed the view that housing is a human right. In order to make these high-level principles a lived reality for Canadians, all levels of government must take an active role in developing practical strategies to ensure that all Canadians are adequately housed. Ontario is one of the wealthiest jurisdictions in the world, yet, many Ontarians do not have access to decent housing.

Adequate and affordable housing is integral to an individual's ability to fully participate in and be a part of his or her community. There is an undeniable link between affordable and adequate housing and quality of life. Housing provides the foundation for general well-being and social inclusion. Adequate housing facilitates access to suitable employment, community resources and supports, and educational opportunities.

The Ontario Human Rights Commission (the "OHRC"), commends the Province of Ontario for identifying the need for a long-term affordable housing strategy. The development of such a strategy was one of the main recommendations coming out of the OHRC's own housing consultation report, *Right at Home*.⁴ The OHRC is very pleased to contribute to the Province's development of this strategy. This written submission complements Chief Commissioner Barbara Hall's verbal input to the Ministry of Municipal Affairs and Housing's roundtable consultation sessions held on both June 22, 2009 and November 3, 2009.

The OHRC recognizes that many have a role to play in the development of a long-term affordable housing strategy. In *Right at Home*, the OHRC recommended that all levels of government work together to develop a coordinated national strategy.⁵ In the absence of a national strategy, or, as the first step toward a national strategy, the Province of Ontario has an opportunity to lead by example. And, in order to ensure the coordination,

consistency and success of a housing strategy at the provincial level, the OHRC is of the view that the Ministry of Municipal Affairs and Housing (MMAH) is in the best position to play a leadership role. The OHRC will offer its support and assistance and, to this end, this document contains a section that outlines several possible areas of partnership between MMAH and the OHRC.

OHRC's Housing Consultation

The OHRC has heard for some time that people identified by *Code* grounds often have significant difficulty accessing and maintaining housing. The OHRC is concerned about the role that discrimination may play in impeding a person's access to housing. Discrimination is more likely to occur when there is an inadequate supply of adequate and affordable housing options.⁶ When housing choices are few, housing providers can afford to be highly selective in choosing tenants and have less incentive to treat tenants well.

In an effort to better understand how discrimination takes place in rental housing, the OHRC initiated a formal public consultation in 2007. To this end, in May 2007, the OHRC released a background paper entitled *Human Rights and Rental Housing in Ontario*.⁷ This paper set out a framework for discussing discrimination in rental housing. The OHRC later released a consultation paper⁸ that asked the public for input on specific human rights issues that arise in rental housing.

In the summer and fall of 2007, the OHRC held its public consultation. Almost 130 organizations and over 100 individuals took part in meetings across the province. The OHRC also received more than 60 formal submissions, and over 100 people wrote in or completed an on-line survey. In July 2008, the OHRC released a consultation report entitled, *Right at Home: Report on the Consultation on Human Rights and Rental Housing in Ontario*, which reported on the feedback it received through its consultation. The report also made recommendations to responsible parties, including the Province of Ontario, for addressing discrimination in rental housing, and included OHRC commitments.⁹

One of the OHRC's commitments was to develop a policy on discrimination in rental housing. On October 5, 2009, the OHRC released its *Policy on Human Rights and Rental Housing*.¹⁰ The Policy provides practical guidance for housing providers, tenants and others that can be applied to everyday situations, so that human rights problems can be eliminated quickly or prevented from happening in the first place. The Policy is Canada's first comprehensive look at how discriminatory barriers to housing can be identified and eliminated. The analysis and examples used in the Policy are based on the OHRC's research on discrimination in rental housing, international standards, human rights claims that have come before the OHRC and the Human Rights Tribunal of Ontario, court decisions, and the extensive input of individuals and organizations throughout the OHRC's consultation process.

As a result of the extensive work it has done in the area of rental housing, the OHRC has developed significant expertise and is well-positioned to offer a unique perspective

to the Province's consultation. As well, much of the information received by the OHRC throughout its consultation will be directly relevant to the development of a provincial affordable housing strategy.

Poverty and Access to Housing

People who have experienced historical disadvantage and who are identified by *Code* grounds are more likely to experience low social and economic status.¹¹ Poverty is linked closely with inequality, particularly for women (especially lone mothers and elderly women), Aboriginal people, racialized groups and people with disabilities. People with low social and economic status often have very limited choices in the private rental housing market and will rely on different forms of social housing.

An increased availability of adequate and affordable housing will go a long way toward combating poverty in Ontario. Without proper housing, individuals and families are thwarted in their attempts to improve the quality of their lives generally. It is the OHRC's view that a viable long-term affordable housing strategy will include the creation of new social housing options, as well as better maintenance of existing social housing units. The OHRC encourages MMAH, as part of its strategy, to explore subsidy alternatives, such as a portable housing allowance, to open up opportunities for people with low incomes in the private rental housing market and to permit greater flexibility in terms of where one may live. Another key part of an effective strategy should be the strengthening of "safety net" features for people at risk of losing their housing. Related initiatives might include increasing the availability of "rent bank" resources, increasing the availability of supportive housing options for at-risk populations, and reviewing eviction procedures under the *Residential Tenancies Act* (the *RTA*).

The Government of Ontario has acknowledged the connection between poverty and human rights. Section 2(2)3 of the *Poverty Reduction Act, 2009*¹² recognizes, "That not all groups of people share the same level of risk of poverty. The poverty reduction strategy must recognize the heightened risk among groups such as immigrants, women, single mothers, people with disabilities, aboriginal peoples and racialized groups." Section 2(3)3 of the *Act* also recognizes that "housing" is one of the key determinants of poverty and accordingly requires annual reporting on indicators to measure its success.

The OHRC was pleased to see these connections made in the Ministry's consultation document, and was very happy that the Ministry is placing their initiative within the broader context of the Province of Ontario's Poverty Reduction Strategy. As it recommended in its consultation report, *Right at Home*, the OHRC encourages the Province of Ontario to work together with all levels of government to integrate housing rights into comprehensive and coordinated poverty reduction strategies.¹³

The OHRC also encourages MMAH to work with other government ministries to assess how inadequate social assistance rates, low minimum wage levels, restrictions on access to rent banks, and vacancy decontrol all impact access to affordable housing.¹⁴

The Ontario Human Rights Code

The Code contains various provisions that protect people against discrimination in housing.

Beginning with its Preamble, the purpose of the Code is to create:

...a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province.

The Preamble also recognizes that it is public policy in Ontario:

...to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination...

Protections

The Code aims to ensure that everyone has the equal opportunity to access housing accommodation and its attendant benefits without discrimination on any of the grounds protected by the Code. In this regard, subsection 2(1) of the Code provides:

Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.

Subsection 2(2) prohibits harassment in accommodation:

Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, disability or the receipt of public assistance.

Subsection 7(1) specifically addresses sexual harassment by a landlord, agent of the landlord or co-tenant:

Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.

Sexual solicitation by a person in a position of relative power vis-à-vis a tenant is prohibited by subsection 7(3):

- (3) *Every person has a right to be free from,*
- (a) *a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or*

 - (b) *a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.*

In the context of rental housing, the person in a position to confer or deny a benefit would most likely be the landlord or superintendent of a residential dwelling.

Defences and Exceptions

Section 18 of the *Code* offers a defence for some housing providers:

The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.

Section 21 of the *Code* sets out three exceptions to the equality rights with regard to housing:

1. Shared accommodation
The right under section 2 to equal treatment... is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner or his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner.
2. Restrictions on accommodation, sex
The right under section 2 to equal treatment ... without discrimination because of sex is not infringed by discrimination on that ground where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex.
3. Prescribing business practices
The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed if a landlord uses in the manner prescribed under this Act income information, credit checks, credit references, rental history, guarantees or other similar business practices which are prescribed in the regulations made under this Act in selecting prospective tenants.

The regulations related to subsection 21(3) permit landlords to use, in the manner prescribed by the *Code* and regulations, income information, credit checks, credit references, rental history, guarantees or other similar business practices for selecting prospective tenants. With respect to the use of income information, Reg. 290/98 under the *Code* permits landlords to request income information from a prospective tenant only if the landlord also requests credit references, rental history, and credit checks, and to consider income information only together with all the other information that the landlord obtained. The subsection and regulations do not allow a landlord to engage in adverse effect discrimination or to refuse to rent to someone because of an enumerated ground under the *Code*.

An individual who believes his or her rights have been violated may choose to make a claim under the *Code*. A person cannot be punished or threatened with punishment

for exercising these rights. Any attempt or threat to punish someone for exercising their human rights is called a “reprisal” and is prohibited under section 8 of the *Code*.

Steps for MMAH to take to address human rights concerns in housing

For a long-term affordable housing strategy to be successful, it is the OHRC’s view that MMAH must take steps to address the human rights issues that arise in housing and that have the potential to impede a person’s ability to access housing opportunities. Discrimination may take place at different stages in one’s experience of housing, and it may take different forms. The *Code* protects a person from discrimination in relation to all aspects of housing, including:

- applying to rent a unit
- tenant rules and regulations
- repairs and maintenance
- using related services and facilities
- one’s general enjoyment of the unit
- evictions.

The *Code* requires a housing provider to accommodate the *Code*-related needs of tenants up to the point of undue hardship. It also protects a person from harassment in relation to all aspects of housing.

The following sub-sections outline specific steps that MMAH can take to help ensure that human rights in housing are respected:

Provide information about rights and responsibilities under the Code

As the provincial Ministry with primary responsibility for housing, MMAH is in the best position to ensure that those involved in the provision of housing are aware of their rights and responsibilities under the *Code*, and that these rights and responsibilities are upheld. Throughout the OHRC’s housing consultation, it was very clear that one of the major contributing factors to discrimination levels in the province was the lack of awareness on the part of housing providers and tenants as to the rights and responsibilities set out in the *Code*.

Housing providers, particularly smaller landlords, may engage in discriminatory practices without even knowing it. For example, in the private rental market, advertisements continue to state that rental opportunities are for “adults only” despite this practice being a clear violation of the *Code*. At times, discrimination in housing may be more intentional. For example, the OHRC has heard of numerous reports of racialized people being told that a unit has been rented only to have a White friend inquire and be told that the unit is still available.¹⁵ The OHRC has taken and will continue to take proactive steps to address systemic discrimination in housing. The OHRC also views MMAH as playing

a major role in providing consistent leadership around preventing and reducing systemic discrimination in housing.

As quasi-constitutional legislation, the *Code* has primacy over all other legislation in Ontario, unless the other legislation specifically states that it applies despite the *Code*.¹⁶ In other words, if another piece of legislation contains a provision that conflicts with or contravenes the *Code*, the *Code* will prevail. This primacy is recognized specifically in the context of rental housing. The *Residential Tenancies Act* contains a provision that states that the *Act* will override any other *Act* that may conflict with it, except for the *Code*.¹⁷ As well, several Ontario Rental Housing Tribunal decisions have recognized the *Code*'s supremacy and special status in their rulings.¹⁸ In practical terms, the *Code*'s primacy means that consideration must be given to the requirements set out in the *Code* in the exercise of all powers under housing-related legislation. Despite the clear language of the *Code*, however, many housing providers continue to be unaware of the *Code*'s special status. For example, many housing providers continue to rely only on the requirements of the Ontario *Building Code* without considering their obligations under the *Human Rights Code*.

The OHRC encourages MMAH to communicate a clear message to its partners, stakeholders and the general public that human rights must be respected. In particular, it must be emphasized that housing-related legislation is subject to the primacy of the *Code*.¹⁹ This information can be communicated through various means, including MMAH's website, information brochures, MMAH's own Investigation and Enforcement Unit, and through MMAH's work with municipalities. In *Right at Home*, the OHRC recommended that MMAH update the information on "Discrimination and Harassment in Rental Housing" on its website to make clear that the *Code* has primacy over the *Residential Tenancies Act (RTA)* and to highlight relevant parts of the OHRC's report, in consultation with the OHRC.²⁰ Increasing the capacity of the Information and Enforcement Unit, in particular, could ensure a provincial resource for landlords and tenants who require information on human rights and rental housing concerns.

Review legislation to identify and remove barriers

The OHRC was pleased to see that the Ministry identified "accessibility" as one of the principles underlying the development of its housing strategy at page 8 of its consultation document. In order to ensure that affordable housing is accessible to people identified by *Code* grounds, MMAH should review the legislation that it administers to identify and remove barriers.

On a number of occasions in the past, the OHRC has expressed significant concern that the accessibility requirements contained in the *Building Code* fall short of the requirements set out in the *Human Rights Code*, and do not result in equal opportunity for people with disabilities.²¹ Relying on relevant building codes has been clearly rejected as a defence to a claim of discrimination under the *Human Rights Code*,²² and housing-providers may be vulnerable to a human rights claim if their premises fall short of the

requirements of the *Human Rights Code*. As was recommended in *Right at Home*, the OHRC encourages MMAH to amend the *Building Code* reflect the legal requirements set out in the *Human Rights Code*, including the principle of accommodation to the point of undue hardship. For example, the *Building Code* should require that when a building is designed or renovated, it must be made accessible to and inclusive of all members of society.²³

During its consultation, the OHRC also heard specific concerns about some of the processes and procedures under the *Social Housing Reform Act*. For example, concerns were raised about the administration of the requirement that occupants must report a change in income or household size. Managers have the discretion to extend this timeline; however, not all do so, and families that fail to quickly report the addition of a child to the household may lose their subsidy. The OHRC also heard that, in general, the *SHRA* is too prescriptive in that it sets out too many guidelines (around occupancy, the selection of households, subsidy availability) that may appear to prevent flexibility to modify procedures to accommodate individuals' needs. In *Right at Home*, the OHRC recommended that MMAH initiate a consultation with a view to amending the *SHRA*, or take other action, to make sure that (a) *Code* needs are accommodated to the point of undue hardship in relation to reporting deadlines, guest policies and other requirements, and (b) there is an independent, impartial review of decisions that affect a tenant's eligibility for a subsidy.²⁴

In addition to the *Building Code Act* and the *SHRA*, MMAH should ensure that the requirements, processes, procedures, etc. of the *RTA*, the *Municipal Act*, the *Planning Act*, and any other housing-related legislation do not have an adverse impact on people identified by *Code* grounds.

Provide training to decision-making bodies

Tribunals, administrative bodies, and other decision-makers that deal with housing-related matters have a significant role to play in helping to fulfill Canada's international commitment to provide adequate housing as set out in the *ICESCR*. Decision-makers who interpret housing-related legislation should view themselves as local monitors of Canada's international commitments and make every effort to use the lens of international human rights when deciding housing matters.²⁵ The Supreme Court of Canada has also made it clear that administrative decision-makers, and this would include the Landlord and Tenant Board (LTB) and service managers under the *SHRA*, for example, are required to consider and apply the *Code* in the course of their decision-making.²⁶

During the OHRC's consultation, participants expressed concerns that the *Code* and international human rights principles are often not applied in decisions made under the *RTA* and the *SHRA*. In *Right at Home*, the OHRC recommended that the *RTA* and the *SHRA* be interpreted and applied by tribunals, service managers and other decision-makers in a manner consistent with the *Code* and the *ICESCR*. For example, the LTB should consider the fundamental importance of housing and apply the *Code* principle of accommodation to the point of undue hardship when considering whether to evict a

tenant with a mental illness for having interfered with the reasonable enjoyment of rental premises.²⁷

Adherence by housing decision-makers to the *Code* and international human rights commitments relating to housing will be imperative if an affordable housing strategy is to be implemented successfully. To this end, the OHRC recommends that MMAH conduct standardized training of all housing decision-makers on how to apply the principles contained in the *Code* and Canada's international human rights commitments. A first step for decision-makers would be to develop accommodation policies and procedures in accordance with the OHRC's *Guidelines on Developing Human Rights Policies and Procedures*, as was recommended in *Right at Home*.²⁸ The OHRC is willing to offer its expertise and experience to assist MMAH in this undertaking.

Facilitate the creation of special programs and special interest organizations

Section 14 of the *Code* permits the use of special programs in housing.²⁹ This allows preferential treatment or programs aimed only at people identified by *Code* grounds, if the purpose of the program is to relieve hardship or economic disadvantage or to help disadvantaged people or groups achieve equal opportunity.

Example: Based on research that indicates that Aboriginal people in Ontario are more likely to be in need of housing than the average household, a special program is created to provide social housing for Aboriginal people.

Example: A housing co-op develops a policy that provides for a mix of market rent units and rent-geared-to-income units to help low wage earners or people who receive social assistance.

There are also circumstances where housing aimed at the needs of older Ontarians will promote the objectives of the *Code* and result in the creation of affordable housing opportunities. Section 15 of the *Code* permits preferential treatment for people aged 65 and older, and therefore permits housing that is limited to people over the age of 64.

Section 18 of the *Code* also provides a means of creating affordable housing opportunities by allowing certain types of organizations, which may also provide housing as part of their services, to limit participation or membership based on *Code* grounds.

Example: A synagogue runs a seniors' residence that is meant to foster the religion and culture of its residents. Prayer services are provided and kosher food is served. It restricts membership to people of the Jewish faith who are over the age of 60.

It is the OHRC's view that facilitating the design and creation of special programs and special interest organizations is one step that MMAH can take to increase adequate and

affordable housing options³⁰ and to address the historical disadvantage experienced by individuals and groups identified by *Code* grounds.

Create a strategy to address discriminatory neighbourhood opposition

A major barrier to the creation of new affordable and supportive housing is the phenomenon of discriminatory neighbourhood opposition (also commonly referred to as “Not in My Back Yard” or NIMBY opposition). Such opposition does not refer to legitimate public consultations or concerns about land use and planning, but to the response to affordable and supportive housing because of negative attitudes towards the people who will live there. These responses are often concerned that such housing will bring down property values, create safety risks or otherwise ruin the neighbourhood.³¹

Municipalities are also concerned about the effects of discriminatory neighbourhood opposition. In a survey conducted by the Canadian Mortgage and Housing Corporation (CMHC), in collaboration with the Federation of Canadian Municipalities (FCM), municipalities of different sizes identified discriminatory neighbourhood opposition as the top regulatory barrier to affordable housing and infill development.³²

People typically affected by such opposition are people who need to rely on affordable housing, such as rooming houses (lodging houses), group homes, social housing and supportive housing, boarding houses, institutional care homes, and shelters. These types of housing often serve people identified by *Code* grounds, including people receiving social assistance, racialized people, Aboriginal people, immigrants and refugees, students (who are often young people), older people, single people, people with disabilities, including mental health issues, and families with young children.

It is the OHRC’s position, as stated in its *Policy on Human Rights and Rental Housing*, that concerns about affordable housing projects should be anchored legitimately in planning issues, rather than stereotypical assumptions about the people for whom the housing is being built. People or groups identified under the *Code* should not have to ask permission from prospective neighbours before moving into a neighbourhood.³³

To the greatest extent possible, people should be able to live in the community of their choice.

Neighbourhood opposition to affordable housing projects can violate the *Code* when it results in changes to existing planning processes, barriers to access to housing or exposes proposed residents to discriminatory comment or conduct. Also, when planning policies or practices are directed towards, or disproportionately affect, *Code*-protected populations, they may be seen to violate the *Code*.³⁴

Zoning by-laws that are not based in a legitimate urban planning rationale and have the effect of “people zoning,” as opposed to zoning the use of the land, are deemed to be invalid³⁵ and could be open to human rights challenges if they result in restrictions to

people identified by *Code* grounds. Zoning by-laws that define and restrict the location of dwellings based on the characteristics of their users, instead of the type of building structure, have been deemed to be discriminatory.³⁶

Municipal requirements and practices are influenced by neighbourhood opposition. As a result, many municipalities have by-laws or practices that may prevent people with low incomes and disabilities, or others such as newcomers to Canada, Aboriginal persons and youth from moving into certain neighbourhoods. A few examples include minimum separation distances between certain types of housing (e.g. group homes for persons with disabilities); zoning definitions that restrict housing based on the characteristics of the people who live there; holding development moratoria that prevent social housing providers from developing on residentially zoned land; and planning processes that place more consultation requirements on affordable or supportive housing.³⁷

City Councils, councillors, neighbourhood associations, developers, decision-makers such as the Ontario Municipal Board, and individuals all have a responsibility to refrain from discrimination against people identified by *Code* grounds based on neighbourhood opposition, and to make sure policies and practices do not give rise to differential treatment. Even though these organizations and individuals may not provide housing directly, they still have an obligation not to contribute to indirect discrimination in the context of housing.

The OHRC has taken several steps to address discriminatory neighbourhood opposition and its impact on people identified by the *Code*. In its *Policy on Human Rights and Rental Housing*, the OHRC provides guidelines on how to identify and avoid practices related to discriminatory neighbourhood opposition. The OHRC has also met with several municipalities to raise specific concerns and offer guidance, and has intervened, and will continue to intervene, in cases dealing with these issues. In *Right at Home*, the OHRC recommended that “all organizations, institutions and individuals developing, planning, approving or giving input with regard to affordable housing for *Code*-protected groups take steps to monitor for discriminatory NIMBY opposition and modify their policies, practices and actions to prevent and address it”.³⁸

The Report also recommended that “organizations across the province, including community groups, the Government of Ontario and municipalities/municipal associations, work in partnership to develop a province-wide strategy to address and prevent discriminatory NIMBY opposition to affordable housing development, in consultation with the [OHRC]”³⁹. To this end, MMAH has a significant role to play in addressing and eradicating discriminatory neighbourhood opposition. MMAH is well-situated to provide consistent, uniform guidance to all municipalities on how to ensure that policies, practices and by-laws do not have an adverse effect on people identified by the *Code*.

The OHRC is currently working with MMAH on the development of an “Information Bulletin” that will provide best practices for municipalities in this area. Although this is a good start, it must be seen as a first step in a broader strategy to be developed and led by

MMAH. MMAH could provide additional leadership in this area by assisting individual municipalities that ask for guidance on addressing discriminatory neighbourhood opposition, assessing municipalities' and regions' official plans to ensure that affordable housing and anti-discrimination measures are in place, and funding and researching best practices to identify how affordable housing can best be integrated. MMAH could also encourage that municipalities establish as of right zoning to implement strategies for housing affordability throughout the municipality.⁴⁰

Provide support to social housing providers

Social housing that is in good supply, good condition, adequately funded and run in accordance with human rights principles is one of the most effective ways of providing affordable and adequate housing to Ontarians. Social housing programs have the potential to provide viable housing options to individuals and families who cannot compete in the private rental housing market. However, during the OHRC's housing consultation, the OHRC heard many concerns from social housing providers that they feel that they lack adequate support.

For example, several social housing providers expressed the view that they are unable to meet their responsibilities under the *Code*, in particular their duty to accommodate to the point of undue hardship, due to inadequate funding from MMAH. The OHRC heard that many housing providers have to take funds away from regular building maintenance to pay for accommodations, which has a major long-term impact on their ability to maintain housing stock in a state of good repair.

In *Right at Home*, the OHRC recommended that "the Government of Ontario increase availability of supportive housing and appropriate support services and ensure that social housing providers have sufficient funds to meet their duty to accommodate".⁴¹ In order to reach the wide range of people who experience difficulties accessing housing, funding programs should cover a spectrum of housing, starting with homelessness initiatives as the first step towards permanent housing. The Report also recommended that "governments expand on measures to help housing providers meet the requirements of inclusive design and accommodation. Options that may be considered include grants and other avenues of funding, programmes of education or changes to legislation, regulations or policies."⁴²

In addition to adequate and consistent funding, housing providers need guidance and training on how to meet their responsibilities under the *Code* (e.g. how to implement the principles of inclusive design, how to respond to accommodation requests, how to provide accommodation to the point of undue hardship, how to proactively identify modifications that may be needed over time, what factors to take into account when setting up an accommodation reserve fund, etc.). As the provincial ministry responsible for housing, MMAH has a role to play in helping social housing providers meet their responsibilities under the *Code*.

Address human rights issues in social housing practices and procedures

Throughout the OHRC's housing consultation, participants raised human rights concerns about the allocation and administration of social housing. For example, frequently, social housing providers lack adequate internal complaint mechanisms for responding to issues of discrimination in the selection of tenants. As well, it was pointed out that there is also a lack of external appeal procedures under the *SHRA* from decisions of social housing providers to deny or revoke housing subsidies.

The OHRC also heard concerns about waiting lists. The U.N. *Committee on Economic, Social and Cultural Rights* has identified the extreme length of waiting lists for subsidized housing as a concern in its recent observations.⁴³ For example, waiting lists for subsidized housing with Toronto Community Housing are between seven and eight years long.⁴⁴ Excessive waiting times for subsidized units means that subsidized housing is not a viable option for a large majority of tenants with low-income in Ontario. In *Right at Home*, the OHRC recommended that "MAAH work with social housing service managers and municipalities to collect data to evaluate barriers associated with the existing approaches to chronological allocation of subsidized housing based on waiting lists and identify ways to remove barriers for persons and groups protected under the *Code*."⁴⁵ MMAH should also consider the benefits of different kinds of subsidy programs, such as portable housing allowances, which allow people to move off social housing waiting lists into market rent housing.

Blanket rules and requirements for social housing eligibility may have an adverse impact on people identified by the *Code*. For example, to be eligible for rent-geared-to-income assistance, an applicant must not owe money to a social housing provider. Some social housing providers require a "clean" 12-month rental record and will not consider people for housing until all rent arrears or fees for damages to previous rental units have been paid. However, it should be noted that some people may have fallen into temporary arrears for *Code*-related reasons, such as the sudden onset of a disability. A blanket policy of this nature does not provide for individualized assessment and does not accommodate people on an individual basis. Unless it will cause undue hardship, social housing providers should take an individualized approach to imposing rental requirements that may have an adverse impact on *Code*-identified people.

Social housing providers should also try to provide some flexibility in other eligibility requirements. For example, if an applicant has a past incident of rental arrears, a social housing provider should inquire into the reasons for this. Where there is a reasonable explanation, the provider should allow the applicant to show responsibility in other ways (for example, by establishing a repayment plan, providing a guarantor, *etc.*) The same flexibility should be applied if an applicant is unable to provide the exact information typically required by a social housing provider (*e.g.* bank account information, specific identification, *etc.*) Some people identified by the *Code*, for example, a new Canadian or a person with a mental illness, may not be able to comply completely with these requirements, but may be able to establish their reliability in other ways.

The OHRC also heard concerns about rigid occupancy policies. For example, policies stipulating minimum number of bedrooms per person, guest policies, and requirements to report changes in income or household size within a specified time period, may have an adverse impact on people identified by the *Code*. It is not consistent with human rights principles for a housing provider to apply and enforce such policies if they do not meet the tests for *bona fide* requirements established by the Supreme Court of Canada in *Meiorin*.⁴⁶ If social housing providers identify barriers that are imposed on them by government (or others) then they have an obligation to follow up with government to seek changes or the removal of those barriers.⁴⁷ The OHRC is also of the view that MMAH, in turn, has an obligation to work with social housing providers to remove those barriers.

In *Right at Home*, the OHRC made a series of recommendations to social housing providers about how to ensure that human rights principles are respected in the administration of social housing.⁴⁸ Through training, partnership and monitoring, MMAH can assist social housing providers, including social service managers, in meeting their *Code* responsibilities. The OHRC can offer guidance and expertise to MMAH to assist in the development of appropriate human rights training.

Areas for potential partnership

The OHRC recognizes that the development of an effective long-term affordable housing strategy requires the joint efforts and cooperation of multiple partners. To this end, the OHRC sees several areas of potential partnership between itself and MMAH.

As mentioned, the OHRC is currently working with MMAH to develop an “Information Bulletin” for municipalities. The OHRC is interested in assisting MMAH with a broader strategy to ensure that attitudes and behaviour related to discriminatory neighbourhood opposition do not impede the successful implementation of an affordable housing strategy.

Throughout this document, the OHRC has identified several areas in which responsible parties would benefit significantly from human rights training. The OHRC sees this training as being most effective if organized and implemented by MMAH. However, the OHRC is available to offer its guidance and expertise in the development of such training.

Conclusion

The OHRC commends the Province of Ontario for taking steps to develop a provincial affordable housing strategy. In its consultation document, MMAH has recognized that such an initiative should be considered part of a broader poverty reduction strategy. The OHRC is looking forward to seeing the links between housing, poverty and discrimination explored more fully in MMAH’s final housing strategy.

The OHRC’s extensive work in the area of housing has provided it with insight on steps that might be taken to address some of the province’s housing problems. The OHRC

will continue to be available to MMAH to share its knowledge and expertise on how to ensure that a housing strategy incorporates human rights principles in its implementation. The OHRC encourages MMAH to review the OHRC's work in housing, particularly:

- *Human Rights and Rental Housing in Ontario: Background Paper*⁴⁹
- *Right at Home: Report on the consultation on human rights and rental housing in Ontario*⁵⁰
- *Policy on Human Rights and Rental Housing*⁵¹

The OHRC strongly recommends that MMAH use defined targets to measure the effectiveness of its housing strategy over time. The OHRC's policies on accommodation emphasize the principles of dignity, individualization, and opportunity to participate fully in the community. Therefore, from a human rights perspective, a successful housing strategy will be one that promotes these concepts: it will result in housing that responds to individual need, promotes full activity in the community, and allows for a high degree of dignity.

Endnotes

¹ *Universal Declaration of Human Rights*, signed Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

² *International Covenant on Economic, Social and Cultural Rights*, (1976) 993 U.N.T.S. 3, Can. T.S. 1976 No. 46.

³ The United Nations General Assembly adopted and proclaimed the *Universal Declaration of Human Rights* in 1948. The *ICESCR* was adopted by the United Nations in 1966 and entered into force in 1976. Canada ratified the *ICESCR* in 1976.

⁴ The OHRC's housing consultation report, *Right at Home*, is available at:

www.ohrc.on.ca/en/resources/discussion_consultation/housingconsultationreport. See in particular Recommendation 6 at page 86: "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."

⁵ See Recommendation 1, in *Right at Home*, *ibid* at 85.

⁶ S. Novac, J. Darden, J.D. Hulchanski & A.M. Seguin, "Housing Discrimination in Canada: What do we know about it?" Research Bulletin #11 (University of Toronto: Centre for Urban and Community Studies, December 2002) at 6, online: < <http://www.urbancentre.utoronto.ca/pdfs/researchbulletins/11.pdf>>.

⁷ The OHRC's background paper on discrimination in rental housing is available at:

www.ohrc.on.ca/en/resources/news/housingback

⁸ The OHRC's consultation paper on discrimination in rental housing is available at:

www.ohrc.on.ca/en/resources/discussion_consultation/housingconsult

⁹ See *Right at Home*, *supra*, note 4.

¹⁰ The OHRC's *Policy on Human Rights and Rental Housing*, is available at:

<http://www.ohrc.on.ca/en/resources/Policies/housing>

¹¹ The connection between membership in a group identified under the *Code* and the likelihood of having low income has been recognized by the Human Rights Tribunal of Ontario in several decisions, as well as by the Courts: see, for example, *Kearney v. Bramalea Ltd. (No. 2)*, (1998), 34 C.H.R.R. D/1 (Ont. Bd. Inq.); *aff'd Shelter Corp. v. Ontario (Human Rights Comm.)* (2001), 39 C.H.R.R. D/111 (Ont. Sup. Ct.).

¹² *Poverty Reduction Act, 2009*, S.O. 2009, c.10:

www.ontla.on.ca/web/bills/status_of_legislation.do?locale=en#152

¹³ See Recommendation 4, in *Right at Home*, *supra*, note 4 at 86.

¹⁴ See Recommendation 10, in *Right at Home*, *supra*, note 4 at 87.

¹⁵ See the Centre for Equality Rights in Accommodation's (CERA) report entitled "Sorry It's Rented: Measuring Discrimination in Toronto's Rental Housing Market." The report estimates that 1 in 4 households receiving social assistance, South Asian households, and Black lone parents experience moderate to severe discrimination when they inquire about an available apartment. Discrimination increases to a rate of 1 in 3 for housing seekers who have a mental illness. Lone parents also experience significant discrimination when attempting to access housing opportunities. The report is available at: www.equalityrights.org/cera/docs/CERAFinalReport.pdf.

¹⁶ Subsection 47(2) of the *Ontario Human Rights Code*, R.S.O. 1990, c. H. 19.

¹⁷ Subsection 3(4) of the *Residential Tenancies Act, 2006*, S.O. 2006 c.17.

¹⁸ See, for example, *Karoli Investments Inc. v. Reid*, [2006] O.R.H.T.D. No. 8 at para. 75 and *Hillhurst Park Apartments v. Wolstat*, [2005] O.R.H.T.D. No. 33.

¹⁹ Throughout the OHRC's housing consultation, particular concerns were expressed about human rights implications relating to the *Building Code Act, 1992*, the *Municipal Act, 2001*, the *Planning Act*, the *Residential Tenancies Act, 2006*, and the *Social Housing Reform Act, 2000*.

²⁰ See Recommendation 19, in *Right at Home*, *supra*, note 4 at 88.

²¹ In March 2002, the OHRC provided extensive input to the Ministry of Municipal Affairs and Housing on the barrier-free access requirements of the *Building Code*. The OHRC's submission outlined ways the *Building Code* can incorporate human rights principles, and emphasized the need to achieve greater harmonization between the two *Codes*. The OHRC's full submission to the *Building Code* consultation is available on the OHRC Website at www.ohrc.on.ca

²² See, for example, *Quesnel v. London Educational Health Centre* (1995), *supra*, note 18.

²³ Specific areas for amendment are discussed in greater detail in the OHRC's *Submission Concerning Barrier-Free Access Requirements in the Ontario Building Code* (March 2002).

²⁴ See Recommendation 21, in *Right at Home*, *supra*, note 4 at 89.

²⁵ See United Nations Committee on Economic, Social and Cultural Rights, *Nineteenth Session General Comment No. 9 The Domestic Application of the Covenant*, Committee on Economic, Social and Cultural Rights, Geneva, E/C. 12/1998/24 at para. 15. See also *Slaight Communications Inc. v. Davidson*, [1989] 1 SCR 1038; and *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

²⁶ See *Tranchemontagne v. Ontario (Dir. Disability Support Program)* [2006] 1 S.C.R. 513.

²⁷ See Recommendation 23, in *Right at Home*, *supra*, note 4 at 89-90.

²⁸ See Recommendation 22, in *Right at Home*, *ibid* at 89.

²⁹ For a discussion of the purposes of section 14 of the *Code* see *Ontario (Human Rights Commission) v. Ontario (Ministry of Health)* 21 C.H.R.R. D/259 (Ont. C.A.). The majority of the Court stated that s. 14(1) has two purposes. One is to protect affirmative action programs from being challenged as violating the formal equality provisions contained in Part I of the *Code*. The second purpose is to promote substantive or concrete equality. Affirmative action programs are aimed at achieving substantive equality by helping disadvantaged persons to compete equally with people who do not have the disadvantage. Section 14(1) is also an interpretive aid that clarifies the full meaning of equal rights by promoting substantive equality.

³⁰ For more detailed information, see the OHRC's *Guidelines on Special Programs* (1997), available on the OHRC's website: www.ohrc.on.ca.

³¹ S. Chisholm, *Affordable Housing in Canada's Urban Communities: A Literature Review* prepared for Canada Mortgage and Housing Consultation (July 2003) at 23, online: www.chra-achru.ca/english/View.asp?x=511 (date accessed October 26, 2006).

³² CMHC, *Survey of Canadian Municipalities: Regulatory measures for Housing Affordability and Choice*, Socio-economic Series Issues, 87, 2001. See www.cmhc.ca, as cited by *Affordability and Choice Today, Housing in My Backyard: A Municipal Guide for Responding to NIMBY*, (Ottawa: Federation of Canadian Municipalities, 2009), at 2.

³³ Chief Commissioner Barbara Hall, “Re: Residents angry over housing project,” (November 14, 2007): www.ohrc.on.ca/en/resources/news/nimby/view

³⁴ For a full discussion of discriminatory neighbourhood opposition, see section V. 2.7 of the OHRC’s *Policy on Human Rights and Rental Housing*, *supra*, note 10.

³⁵ The Ministry of Municipal Affairs and Housing indicates that a zoning by-law is invalid if its effect is to regulate the user, as opposed to the use of the land. Ministry of Municipal Affairs and Housing submission to Commission’s Housing Consultation; *R.v.Bell* (S.C.C.), (1979), 98 D.L.R. (3rd) 255.

³⁶ *Alcoholism Foundation of Manitoba v. Winnipeg* (City of), (Man. C.A.), (1990), 69 D.L.R. (4th) 697.

³⁷ From information provided by HomeComing Community Choice Coalition. See <www.homecomingcoalition.ca>.

³⁸ See Recommendation 24, in *Right at Home*, *supra*, note 4 at 90.

³⁹ See Recommendation 25, in *Right at Home*, *ibid*.

⁴⁰ Affordability and Choice Today, *Housing in My Backyard: A Municipal Guide for Responding to NIMBY*, (Ottawa: Federation of Canadian Municipalities, 2009), at 9.

⁴¹ See Recommendation 15, in *Right at Home*, *supra*, note 4 at 88.

⁴² See Recommendation 5, in *Right at Home*, *ibid*. at 86.

⁴³ See Canada United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant (Concluding Observations – Canada)*, 10 December 1998, E/C.12/1/Add.31 and United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant (Concluding Observations – Canada)*, 19 May 2006, E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, para. 28.

⁴⁴ The Ontario Non-Profit Housing Association’s 2009 Report on Waiting List Statistics for Ontario states that waiting lists for social housing in the province are getting longer, with a 4% increase in 2008. The Association reports that 130,000 households are currently on the waiting list for social housing, but that this number may be a very conservative estimate given that many households, discouraged by the lengthy waiting times, walk away without filing an application.

For the full report, see: www.onpha.on.ca.

⁴⁵ See Recommendation 18, in *Right at Home*, *supra*, note 4 at 88.

⁴⁶ *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* [“Meiorin”] [1999] 3 S.C.R. 3. See also: *Fakhoury v. Las Brisas Ltd.* (1987), 8 CHRR D/4028 (Ont. Bd. Inq.); *Desroches v. Québec (Comm. des droits de la personne)* (1997), 30 CHRR D/345 (C.A. Qué.); *Cunanan v. Boolean Developments Ltd.* (2003), 47 CHRR D/236 (H.R.T.O.).

⁴⁷ *Iness v. Caroline Co-operative Homes Inc. (No. 5)* (2006), CHRR Doc. 06-450, 2006 HRTO 19, at paras. 302 to 335.

⁴⁸ See Recommendations 26-30, in *Right at Home*, *supra*, note 4 at 91.

⁴⁹ *Human Rights and Rental Housing in Ontario: Background Paper*, *supra*, note 7.

⁵⁰ *Right at Home*, *supra*, note 4.

⁵¹ *Policy on Human Rights and Rental Housing*, *supra*, note 10.