



OHRC engagement on poverty and systemic discrimination in the areas of accessible, adequate and affordable housing, mental health and addiction disabilities

Background paper

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Overview

The OHRC is undertaking an engagement initiative on poverty and systemic and intersectional discrimination in the areas of adequate, accessible and affordable housing and mental health and addiction disabilities. The OHRC's goal is to develop a report including recommendations. Understanding how the *Code* applies in the area of poverty will help address human rights issues disproportionately experienced by groups protected under the *Code*, and exacerbated by systemic situations like the COVID-19 pandemic.

The OHRC wants to hear from community organizations, researchers and people with lived experience on how systemic and intersectional discrimination in housing and mental health and addiction disabilities causes and sustains poverty.

Poverty, understood as social and economic disadvantage (see “working definition” in Appendix A), is a human rights issue disproportionately experienced by groups protected under the *Human Rights Code (Code)*, and exacerbated by systemic situations like the COVID-19 pandemic.

In the Ontario Human Rights Commission's (OHRC) [2017–2022 Strategic Plan](#), the OHRC committed to focus on poverty and to advance the field of human rights law by, among other things:

- Bringing to light the lived reality of people who experience poverty, homelessness and hunger, and fostering public conversation that explores the links between poverty and systemic discrimination
- Using its expertise in policy research and development to deepen policy, legal analysis and understanding of human rights by making connections between Ontario's human rights framework and international human rights conventions and treaties, including the *International Covenant on Economic, Social and Cultural Rights*
- Bringing a human rights lens to government and community strategies aimed at addressing poverty, homelessness and food insecurity.

In 2019, the OHRC created a Poverty Advisory Group (PAG) under section 31.5 of the *Code* to help guide its work. PAG members contributed diverse views which informed the poverty engagement proposal. Members will continue to guide the OHRC through the poverty engagement and policy development process.

COVID-19, poverty, housing, mental health and addiction disabilities

Since March 2020, the COVID-19 pandemic has taken a stark health, social and economic toll on communities around the world. In Ontario, research shows that the pandemic has further entrenched and deepened levels of poverty, especially for *Code*-protected groups.¹ Individuals and groups who struggled to keep their housing or feed their families and who were unable to stay home during lockdowns, died in larger numbers and suffered disproportionate impacts on their mental health² and their rights to access education, health, housing and other supports.

The pandemic has also shone a bright light on the particular vulnerability of individuals and families who lack access to adequate, accessible and affordable housing. People who lost work, feared eviction³ and people experiencing homelessness often lacked safe options for shelter. Even before the pandemic, *Code*-protected groups disproportionately experienced difficulties in finding housing to meet their needs. Colour of Poverty-Colour of Change reported that in 2019, just over 50% of racialized households in Canada lived in homes that were not affordable (leading to homelessness) and were inadequate (needed repairs or maintenance) and unsuitable (overcrowded, among other issues). This compared to 28% of non-racialized households.⁴ Similarly, according to the Census, one-quarter (26.2%) of Inuit, 24.2% of First Nations people and 11.3% of Métis live in a dwelling that is in need of major repairs/is crowded.⁵

For individuals with a disability – one in seven Ontarians – finding adequate, accessible and affordable housing can be extremely difficult. People with disabilities often face discriminatory screening practices by landlords and blanket refusals to retrofit accessibility features when accommodation needs arise. Four out of 10 people living with a disability experience poverty⁶ and the United Nations reports that the pandemic has only intensified this disadvantage.⁷

Mental health and addiction disabilities have also been significantly impacted by the pandemic. The Canadian Centre on Substance Use and Addiction (CCSA) and the Mental Health Commission of Canada (MHCC) conducted polling throughout the pandemic, and found that substance use and mental health concerns are greatest among people with low incomes or who are unemployed, and while more people are accessing virtual mental health and addiction services, access rates remain low. Twenty per cent of survey respondents with mental health concerns reported accessing virtual services, compared with 10% of respondents with substance use concerns.⁸

Research is also showing that gender-based violence, “is a predictable and consistent side effect of economic, epidemiological, and environmental crises such as COVID-19”.⁹ The United Nations has dubbed gender-based violence during COVID-19 as the “Shadow Pandemic” with significant impacts on the mental and physical health of women and girls globally.¹⁰

The pandemic has exposed, much like an X-ray, a broken housing system that increasingly fails to meet the needs of *Code*-protected groups, as well as an urgent need for mental health and addiction disabilities supports, especially for the most vulnerable people. Research has shown that the lack of adequate, affordable and accessible housing and the experience of mental health and addiction disabilities are inextricably linked to poverty.

Lack of adequate, affordable and accessible housing and mental health and addiction disability supports

The high cost of market housing combined with long wait lists for community housing¹¹ has created an extreme shortage of affordable, stable and safe housing, and is a leading contributor to poverty in Ontario.¹² Before COVID-19, the housing and homelessness crisis was serious and widespread. For example, the OHRC has long identified systemic discrimination in housing issues, and has raised concerns about zoning and other barriers¹³ to developing low-cost rental housing, group homes, supportive housing and transitional housing. The pandemic has intensified housing precariousness in most communities across Ontario. Housing instability and homelessness are on the rise as people are unable to pay rent due to job loss or reduced income. And, for people living with disabilities, housing choices are extremely limited, chronically inaccessible and often substandard and unsafe.

Many people with mental health and addiction disabilities rely on social assistance, and the majority do not have access to affordable housing.¹⁴ People with mental health and addiction disabilities disproportionately experience poverty and homelessness.¹⁵ While many factors can lead to homelessness, including systemic discrimination, mental health plays a significant role – an estimated 25% to 50% of homeless people live with a mental health disability.¹⁶

The pandemic has led to a significant increase in mental health issues such as anxiety, depression and loneliness.¹⁷ The homelessness, addiction and mental health crisis is especially acute in Northern Ontario, and research is showing that current services and programs are not adequately meeting the needs of Northern communities.¹⁸

What poverty looks like by the numbers

Statistics Canada's [2016 Census](#)¹⁹ shows that 14.1% of people in Ontario have low incomes (defined as half or less of the median adjusted after-tax household income). Groups typically vulnerable to discrimination are even worse off. Higher poverty rates are found for groups such as people living with disabilities (23.5%), First Nations, Inuit and Métis peoples (23.7%), Black people (24.1%), female-led families (29.8%) immigrants arriving between 2001 and 2016, (35.6%), and Arab people (40.6%).²⁰

Inequality doesn't stop there. Groups vulnerable to poverty and discrimination are more likely to have lower levels of education, live in unsuitable and unaffordable housing or experience homelessness, be less involved in the labour force, work in unstable jobs or be unemployed, and be more caught up in the justice system.

Poverty is directly connected to increased rates of gender-based violence. On any given night in Canada, there are over 6000 women and children sleeping in shelters due to unsafe living conditions at home and a lack of access to other adequate housing options.²¹ The combined impacts of poverty and violence create numerous barriers to women's equality, health and well-being, with specific and differential implications for Indigenous and other racialized women.

People living in poverty experience various kinds of negative social attitudes that factor into discrimination and inequality. For example, in its 2017 report [*Taking the Pulse: People's opinions on human rights in Ontario*](#), the OHRC found that among a representative sample of Ontarians, only a minority (39%) reported feeling positive towards people who receive social assistance. Respondents were least positive towards this group compared to other groups.

There is also a high economic cost to not addressing poverty. A Feed Ontario report shows that the costs are in the tens of billions of dollars per year for Ontario. The 2018 "Income Security: a Roadmap for Change" [report](#) also recognizes that poverty costs everyone because it results in higher costs across health care, social and justice services. Poverty also correlates with food insecurity, precarious work, exposure to environmental hazards, and receipt of different types of social assistance.

Voices of experience

The voices of people who experience poverty give real insight on how poverty affects many aspects of daily life, especially for certain groups and communities.

One man who was issued roughly \$10,000 in ticket fines for panhandling under Ontario's [*Safe Streets Act*](#) told the OHRC: "I was trapped in a...cycle of homelessness, alcoholism and untreated post-traumatic stress. My tickets prevented me from obtaining a driver's licence and would have made it much more difficult for me to obtain quality housing, credit, or even a good job eventually."

A psychiatric survivor said: "I am responsible for rebuilding my sense of self, my life, etc. – but I did not choose to be housed in substandard conditions, and absolutely know that I was treated poorly because of my disabilities and low-income status by the people that were paid to advocate/assist people in my circumstances."

A man receiving Ontario Works told the OHRC his story of how he became homeless. While living in time-limited transitional housing, he finished retraining under Ontario Works and had a job and a new apartment lined up. But his caseworker said the rent was too high and would not issue shelter allowance. He lost the apartment, ended up on

the street, and with no address, was cut off benefits. Taking shelter in a cemetery crypt, he said: “It’s a little damp, but the cops don’t roust me, it’s quiet, and it’s free.”

A First Nation participant from James Bay Treaty 9 area said at the OHRC’s 2018 First Nations, Inuit and Métis dialogue event:

[W]e don’t have schools and all the other stuff: housing to live in, drinking water...We have mining and hydro companies knocking on our doors saying “we want to consult with you, partner with you, we want to dam the rivers, we want you to buy into this.” Our kids are being removed hundreds of miles away en masse to go to school. We are under-resourced in our education and schools and our health services. Where is the role for the OHRC, HRCO and human rights system in that? How do we get the houses built, the water purified? That is part of the systemic racism.

A transgender focus group participant said: “I can’t make enough money to support myself right now, and the stress of that has a huge impact on my mental health...The discouragement of looking for work that you are qualified for, and that you know you can do, and being turned down again and again and again, is really damaging.”

Another focus group participant said, “On the low income provided by social assistance you can’t get proper food.”

Recently, the Accessible Housing Network said: “the accessible housing situation is made even more discriminatory because of the experience of poverty among half of all people with disabilities.”

In [*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*](#), numerous family members and survivors shared that, “social and economic marginalization, generally speaking, contributes to, or is directly connected to, the violence they or their loved one experienced”.²²

Poverty and Canada’s human rights legal framework

International treaty obligations

The UN [describes](#) poverty as “more than the lack of income and resources to ensure a sustainable livelihood. Its manifestations include hunger and malnutrition, limited access to education and other basic services, social discrimination and exclusion as well as the lack of participation in decision-making.”

Since the [*Universal Declaration of Human Rights*](#) was adopted in 1948, the right to an adequate standard of living, including food, clothing and housing, is internationally recognized as a fundamental human right.

The [*International Covenant on Economic, Social and Cultural Rights*](#) (ICESCR), which Canada ratified in 1976, more specifically recognizes that everyone has the right to an

adequate standard of living and continuous improvement of living conditions, including without discrimination. The ICESCR sets out related rights to social security, education, work and health care, among other rights. It recognizes that all human rights are interdependent and indivisible.²³

Among other obligations, the ICESCR requires a country to give effect to the rights in the ICESCR “by all appropriate means.” The UN treaty body of independent experts responsible for monitoring implementation of the ICESCR has prepared [General Comment No.9](#) on domestic implementation. This states:

“[I]n general, legally binding international human rights standards [like the ICESCR] should operate directly and immediately within a country’s domestic legal system, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals.”

The ICESCR also applies to all levels of government in a federal state. Canada, its provinces and territories, including Ontario, are therefore required to address poverty as a human rights issue under the ICESCR and other human rights treaties.

At the same time, international treaty obligations are not binding in Canada unless they have been incorporated into domestic legislation.²⁴ While Ontario has not adopted the ICESCR directly into legislation, the Supreme Court of Canada has said that a domestic law is presumed to conform to international treaty obligations unless there are express provisions in the law to the contrary.²⁵

First Nations, Inuit and Métis rights

Under the ICESCR, First Nations, Inuit and Métis peoples have the right to freedom from poverty and to other related economic, social and cultural rights, including without discrimination. These rights are also recognized in the UN [Declaration on the Rights of Indigenous Persons](#) (*UN Declaration*).

After a long period of refusing to sign on, in 2015, Canada signed the *UN Declaration* without reservations.

The *UN Declaration* provides that government shall take effective measures to ensure continuing improvement of the economic and social conditions of First Nations, Inuit and Métis peoples, including in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. The *UN Declaration* says that particular attention shall be paid to the rights and special needs of First Nations, Inuit and Métis elders, women, youth, children and persons with disabilities.

The *UN Declaration* also says that First Nations, Inuit and Métis peoples have the right to have access to financial and technical assistance from governments to enjoy the rights it contains. They also have the right to self-determination and to freely pursue their economic, social and cultural development.

Since 1980, Canada has been party to the [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW). In 2015, Canada, for the first time, was the subject of an inquiry under Article 8 of the Optional Protocol to the CEDAW. The [inquiry](#) found grave and systematic violations by Canada of the rights set forth in CEDAW, namely that: Indigenous women and girls experience extremely high levels of violence, particularly high number of disappearances, murders and rates of violence and sexual assault 3.5 times higher than non-Indigenous women. The inquiry report called on Canada to launch a national public inquiry and plan of action among numerous other recommendations.

First Nations, Inuit and Métis peoples in Canada also have other distinctive legal rights, including under section 25 of the Canadian *Charter* and section 35 of the *Constitution Act, 1982*. Section 25 guarantees that no rights protected under the *Charter* will be used to overrule or take away from a right belonging to First Nations, Inuit and Métis people.

Section 35 of the *Constitution Act, 1982*, recognizes and affirms existing Indigenous and treaty rights. These rights are held by First Nations, Inuit and Métis peoples, and cannot be extinguished. They include but are not limited to enforcing Indigenous land titles and treaties with federal, provincial and territorial governments. These rights can involve economic, social and cultural rights. The Supreme Court of Canada has said that government has a duty to consult First Nations, Inuit and Métis peoples when they consider actions or decisions that may affect potential or established First Nations, Inuit and Métis or treaty claims or rights under the *Constitution*.²⁶

First Nations, Inuit and Métis peoples have all the same legal rights as other people in Canada under the *Constitution Act* and the *Charter*, including “the right to life, liberty and security of the person, and the right to equal protection and equal benefit of the law without discrimination.” First Nations, Inuit and Métis peoples, including First Nations peoples living on and off reserves, also have all the same rights as other people under federal, provincial and territorial anti-discrimination legislation, including Ontario’s *Code*.

Federal, provincial and territorial jurisdictions can sometimes overlap, and questions of jurisdiction arise when identifying responsibility for human rights and First Nations, Inuit and Métis rights under the various legal frameworks. Although the federal government has legislative jurisdiction over “Indians and lands reserved for Indians” under the *Constitution*, the Supreme Court of Canada has emphasized that First Nation and *Indian Act* reserves are not “federal enclaves” that are exempt from provincial laws of general application.²⁷ Also, recent court decisions have emphasized the principle of cooperative federalism, and have narrowed the scope of areas that fall within exclusive federal jurisdiction.²⁸

It is important to note that approximately 85.5% of the Indigenous population in Ontario lives off reserve, and as a result, rely on access to provincial services, e.g. housing, mental health and addiction disability services. Census results also indicate that the off reserve population continues to grow in Ontario.²⁹

Canadian Charter of Rights and Freedoms

The [Canadian Charter of Rights and Freedoms](#) (*Charter*) enshrines the rights and freedoms the government must uphold, including the right to life, liberty and security of the person under section 7 and the right to equality under section 15.

The *Charter* does not explicitly create a freestanding right to an adequate standard of living or freedom from poverty. However, it should generally be presumed to offer protection at least as great as the protections Canada agreed to uphold in its international treaties.³⁰ Courts and tribunals in Canada have applied international treaty obligations (including obligations relating to economic and social rights) to interpret the intent and scope of rights in domestic legislation like the *Charter*.³¹

Courts and tribunals have also used UN comments, country reports, monitoring body recommendations, and Canada's statements at international forums to assess the scope of its domestic obligations to protect rights.³²

Like the *Charter*, the *Code* should be interpreted to align with Canada's international obligations. Indeed, the Preamble to the *Code* explicitly links its protections to the "Universal Declaration of Human Rights as proclaimed by the United Nations."

Federal-provincial-territorial anti-discrimination legislation

Social condition

Human rights legislation in Canada, including Ontario's *Code*, can address discrimination in areas such as employment, housing and education that involve economic, social and cultural rights based on a broad range of grounds such as ethnicity, ancestry, race, sex, gender identity, disability, family status and sexual orientation.

Five jurisdictions also include "social condition" or a similar protected ground in their human rights legislation: Québec, New Brunswick, Northwest Territories, Manitoba ("social disadvantage" and "source of income") and Newfoundland and Labrador ("social origin" and "source of income"). "Source of income" is recognized in Yukon, Nunavut, Alberta and Prince Edward Island's legislation. Saskatchewan's *Code* covers "receipt of public assistance." Ontario's *Code* covers "receipt of public assistance" only in the area of housing.

The ICESCR treaty body has [called](#) for inclusion of social condition as a protected ground across all jurisdictions in Canada.

The OHRC has [called](#) for Ontario to amend the *Human Rights Code* to add protections for poverty-related discrimination. Improvements to Ontario's *Code* would show that Ontario is taking meaningful steps to meet its obligations under the [International Covenant on Economic, Social and Cultural Rights](#) and the [UN Declaration on the](#)

[Rights of Indigenous Peoples](#). See Appendix A for a definition of poverty that was a part of that call.

Multiple grounds

Poverty and systemic discrimination intertwine across certain group identities and many areas of life. Anti-discrimination legislation like Ontario's *Code* can address allegations of discrimination in areas related to economic, social and cultural rights that intersect with poverty including in employment, vocational associations, housing, social assistance and support programs, education, health care, the justice system, and other services. Groups identified by *Code* grounds that disproportionately experience poverty also disproportionately experience inequality in these areas.

Courts and tribunals have acknowledged the disproportionate impact of poverty on women and single mothers,³³ children of single mothers,³⁴ racialized mothers,³⁵ First Nations, Inuit and Métis peoples,³⁶ people with disabilities,³⁷ Black people³⁸ and other *Code*-protected groups, and they have acknowledged that these groups experience poverty in higher numbers.³⁹

In general terms, the Human Rights Tribunal of Ontario noted in *Kearney v Bramalea Ltd*⁴⁰ that the *Code* may be brought into play when low income is connected to grounds such as race, family status, age, disability (including mental illness) or being in receipt of public assistance, such as Ontario Works or Ontario Disability Support Program benefits. The OHRC successfully litigated the *Kearney* case and has since [spoken out](#) about these links with poverty-related legislation and strategies.

Poverty reduction legislation, strategies and related programs

Some jurisdictions in Canada have poverty reduction legislation, and most have poverty reduction strategies and related programs. British Columbia, Quebec, New Brunswick, Manitoba, Nunavut and Ontario all have poverty reduction legislation and strategies. Saskatchewan, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Yukon and the Northwest Territories have poverty reduction strategies but no poverty reduction legislation. Alberta has no legislation or plan.

A 2018 [study](#) explored the impact of poverty reduction strategies among Canadian provinces, and suggested they may be no more than “window dressing.”

In 2018, the federal government released its first [poverty reduction strategy](#), and in 2019, passed the [Poverty Reduction Act](#). The *Act* provided for an official poverty measure, set poverty reduction targets and established the National Advisory Council on Poverty.

Also in 2019, the federal government passed the [National Housing Strategy Act \(NHS Act\)](#) which commits to progressively realizing the right to adequate housing as recognized in the ICESCR. Progressive realization refers to the obligation in article 2(1) of the

ICESCR requiring States “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.”

The right to adequate housing as stated in the NHSA is presented as a mechanism by which ICESCR is implemented domestically. General Comment No. 4, developed by the Committee on Economic, Social and Cultural Rights, provides a framework of the seven essential features of the right to housing, including:

1. Legal security of tenure (which means legal protection of tenants from things like eviction)
2. Availability of services and materials
3. Affordability
4. Habitability
5. Accessibility
6. Location
7. Cultural adequacy.⁴¹

Ontario has had its [Poverty Reduction Act \(Act\)](#) in place since 2009. The *Act* requires that every five years, the government must set a poverty reduction target and maintain a poverty reduction strategy, with success indicators.

The *Act* 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.” The *Act* also says that people living in poverty are to be involved in designing and implementing the strategy, and that the success of the strategy will require the involvement of non-profit, charitable and voluntary organizations as well as the sustained commitment of all levels of government, all sectors of Ontario society and a growing economy.

Ontario’s first poverty reduction strategy, released in [2009](#), focused on breaking the intergenerational cycle of poverty for children and their families. Ontario’s second poverty reduction strategy, released in [2014](#), had an additional focus on homelessness. The strategies have included social and economic measures related to, among other things, the poverty rates of vulnerable populations, birth weight, educational progress, affordable housing and unemployment.

Ontario’s most recent poverty reduction strategy, [Building a Strong Foundation for Success: Reducing Poverty in Ontario \(2020–2025\)](#) sets a more singular target to “move more social assistance recipients into meaningful employment and financial stability.” The OHRC [commented](#) on Ontario’s current strategy and raised serious concerns that the strategy does not address some of the more complex and intersecting reasons that lead people to need social assistance. The OHRC recommended that the government should:

- Commit to measures that support low-income workers such as health benefits, paid sick days and portable housing supports
- Set a specific target that aligns with or exceeds the federal target of a 20% reduction in poverty by 2020 and a 50% reduction by 2030
- Set an additional target to eliminate deep poverty within five years
- Annually report data on the proportion of the population that experiences chronic homelessness, unmet health needs, food insecurity, lack of literacy, minimum wage and low-paid work, broken down by disadvantaged groups
- Regularly consult people with lived experience or heightened risk of poverty to guide implementing the strategy.

Like other jurisdictions in Canada, Ontario has also legislated [programs and plans](#) that provide social assistance payments to people with low incomes, including people living with disabilities. Ontario also has [various programs](#) to address affordable housing and homelessness. In 2019, the government released a new [Housing Supply Action Plan](#) and a [Community Housing Renewal Strategy](#), and passed [Bill 108, More Homes More Choice Act, 2019](#).

However, many groups and much data suggest that Ontario is making little progress towards realizing the right to freedom from poverty. In its 2016 [Concluding observations on Canada's sixth report](#), the UN treaty body said it: "is concerned about the significant number of people living in poverty. It is further concerned that First Nation, Inuit and Métis peoples, persons with disabilities, single mothers and minority groups continue to experience higher rates of poverty and at the limited effectiveness of measures taken to address that issue." The UN treaty body also raised concern about the inadequate social assistance rates in all provinces, and recommended that governments increase rates to levels that allow a decent living and an effective income safety net.

The challenge of access to justice for poverty-related claims

The UN has long [recognized](#) the increasing international acceptance of the ability to exercise, through a tribunal or court, economic, social and cultural rights.

However, in its [2016 Concluding Observations](#) on Canada's sixth ICESCR report, the ICESCR treaty body said it is "concerned that, despite certain promising developments and the Government's commitment to review its litigation strategies, economic, social and cultural rights remain generally non-justiciable in domestic courts."⁴² The treaty body also said: "the limited availability of legal remedies...may disproportionately impact disadvantaged and marginalized groups and individuals, including homeless persons, First Nation, Inuit and Métis peoples and persons with disabilities."

The courts in Canada have consistently refrained from recognizing freestanding positive social or economic rights. However, there are several scenarios where government has been found to have an obligation to take steps to address a socioeconomic inequality. These situations include when:

- A social program that the government has created is perpetuating discrimination⁴³
- There is a duty to accommodate a need related to a government service⁴⁴
- Cutbacks or program closures of government services have a disproportionate impact on disadvantaged groups.⁴⁵

A series of cases has also found that in the absence of sufficient social programs, the government cannot enforce legislation that prevents a person from safeguarding their own health and housing.⁴⁶ These decisions do not explicitly order government to invest in social programs. However, the implication is that if a government wants to be able to enforce its legislation, it may in some circumstances have to invest additional resources in social programs first.

Appendix A

Working definition of poverty

Poverty can be understood as people who experience one or more forms of social or economic disadvantage resulting from:

- Employment status (including precarious work)
- Source or level of income
- Housing status, including homelessness (includes shelter living, couch surfing, sleeping rough, precarious housing)
- Level of education, or
- Any other similar circumstances [such as:
 - Level of health, including mental health and addiction disabilities, lack of access to care, supports and illness prevention, including during the COVID-19 pandemic
 - Intergenerational poverty/trauma
 - Over-representation in the family and child welfare system
 - Complexities of navigating social service programs
 - Municipal bylaws that disproportionately affect people based on social condition or a *Code* ground
 - Inter-jurisdictional disputes
 - Exposure to environmental hazards, through employment or in housing
 - Justice involvement and insufficient discharge planning
 - Food insecurity.]

Endnotes

¹ See City of Toronto. [“COVID-19: Ethno-racial identity & income”](#) (2021). And, Government of Canada. [“A labour market snapshot of Black Canadians during the pandemic”](#) (2021).

² Wellesley Institute and Mental Health Commission of Canada. “The Impact of COVID-19 on Mental Health and Well-Being: A Focus on Racialized Communities in the GTA” (2022).

³ The Landlord Tenant Board (LTB) – the provincial body in charge of resolving disputes between landlords and tenants – is experiencing significant backlog, and with the moratorium on evictions now lifted, the LTB has “turned into an eviction factory,” [according to the Association of Community Organizations for Reform Now \(ACORN\)](#).

⁴ Colour of Poverty – Colour of Change. [“Fact sheet #9: Racialized Poverty in Housing and Homelessness.”](#)

⁵ Statistics Canada. (2017). Aboriginal peoples in Canada: Key results from the 2016 Census

⁶ Disability without Poverty. [“Statement on Canada Disability Benefit Petition response”](#) (2022).

⁷ United Nations, Department of Economic and Social Affairs: Disability. [“COVID-19 and Persons with Disabilities: New UN report calls for disability-inclusive recovery”](#) (2020).

⁸ Canadian Centre on Substance Use and Addiction. [“Mental Health and Substance Use During COVID-19”](#) (2021).

⁹ Peterman, A., Potts, A., O’Donnell, M., Thompson, K., Nyati, S. Oertelt-Prigione, S., & van Gender, N. (2020). Pandemics and violence against women and children: Working paper 528. Centre for Global Development.

¹⁰ UN Women. *The Shadow Pandemic: Violence against women during COVID-19*. (2021)

¹¹ Community housing includes social housing and affordable housing.

¹² Canadian Mental Health Association. “[Housing and mental health fact sheet](#).” 2021.

¹³ The OHRC took the position in correspondence to several municipalities, in its inquiries into rental housing licensing in Waterloo and North Bay, and in interventions at the Human Rights Tribunal of Ontario that ultimately settled, that zoning or licensing restrictions that limit the availability of low-cost housing have a disproportionate impact on *Code*-protected groups and are covered by the *Code* in the social areas of accommodation and services. Case law is extremely limited in this area. In *Dream Team v Toronto (City)*, 2012 HRTO 25 (CanLII), a coalition of people with disabilities launched an HRTO application alleging that the city’s imposition of minimum separation distances on group homes had an adverse effect on them in the social areas of services and (indirectly) in housing. The city brought a request for early dismissal of the application on several grounds, including the Dream Team’s failure to state a *prima facie* case. After the HRTO denied this request, the city filed a judicial review, seeking to have the HRTO’s decision set aside. The OHRC intervened to oppose the city’s request. In *City of Toronto v The Dream Team*, 2012 ONSC 3904 (CanLII), the Ontario Superior Court of Justice rejected the city’s request for judicial review of the HRTO decision. The Court noted that it was still an open question as to whether zoning bylaws can cause indirect discrimination in occupancy of accommodation under the *Code*, and whether they are a service under the *Code* (as per *Lee v City of Toronto*, 2012 HRTO 412, where the HRTO “expressly left open” the issue of whether zoning bylaws might be a service). The *Dream Team* matter settled before the HRTO could issue a final decision.

¹⁴ *Ibid.*

¹⁵ Homeless Hub. “[Mental health and addictions](#).” 2020.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ “Northern Ontario’s municipalities call for ‘made-in-North’ solution to addictions, mental health and homelessness crisis” *The Star*, February 4, 2022.

¹⁹ Comprehensive Statistics Canada Census 2021 data, including on income, housing and Indigenous peoples, had not yet been released when this background paper was drafted.

²⁰ *Right to Read*, the OHRC’s 2022 report on its public inquiry on reading disabilities and in Ontario’s public education system notes that students with reading disabilities are more likely to drop out of school, less likely to go on to post-secondary education, and tend to take longer to finish programs they enroll in. The effects can continue past their schooling and can have a negative impact on employment, and lead to lower incomes, poverty and homelessness and higher rates of involvement in crime and incarceration. Adults with dyslexia told the inquiry about long-term effects of not learning to read, such as mental health and substance abuse issues and negative impacts on their employment.

²¹ Zannis, Alexandra. *Tackling poverty, Gender Based Violence and human rights*. Carleton University (2018)

²² *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Volume 1a, p. 519.

²³ Provisions related to poverty are set out in the three core international human rights instruments: the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights*. Provisions related to poverty are also found in other international human rights instruments, such as the *Convention on the Elimination of all forms of Racial Discrimination*, the *Convention on the Elimination of all forms of Discrimination Against Women*, and the *United Nations Declaration on the Rights of Indigenous Peoples*.

²⁴ See, for example, *Capital Cities Comm v CRTC*, 1977 CanLII 12 (SCC); *Slaight Communications Inc v Davidson*, 1989 CanLII 92 (SCC) [*Slaight Communications*]; *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC); *Gosselin v Quebec (Attorney General)*, 2002 SCC 84 (CanLII); *R v Hape*, 2007 SCC 26[*Hape*].

²⁵ See *R v Appulonappa*, 2015 SCC 59 (CanLII), where the Court found at 40 that: “As a matter of statutory interpretation, legislation is presumed to comply with Canada’s international obligations, and courts should avoid interpretations that would violate those obligations. Courts must also interpret legislation in a way that reflects the values and principles of customary and conventional international law:

R. v Hape, [2007 SCC 26](#), [2007] 2 S.C.R. 292, at para. [53](#); *Németh v Canada (Justice)*, [2010 SCC 56](#), [2010] 3 S.C.R. 281, at para. [34](#).”

Also see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) at 114:

“We would also note that in some administrative decision-making contexts, international law will operate as an important constraint on an administrative decision-maker. It is well established that legislation is presumed to operate in conformity with Canada’s international obligations, and the legislature is ‘presumed to comply with...the values and principles of customary and conventional international law....”

But note *Quebec (Attorney General) v 9147-0732 Quebec Inc.*, 2020 SCC 32 (CanLII), which states at 38: “binding instruments necessarily carry more weight in the analysis than non-binding instruments. While resort may be had to both, courts drawing from a non-binding instrument should be careful to explain why they are drawing on a particular source and how it is being used.” (Justice Abella, in her concurring opinion, dissented on this point, stating at 102–103 that presumptively narrowing the significance of non-binding sources of international law does a disservice to the Court’s ability to consider them.)

²⁶ For example, see Supreme Court decisions in *Haida Nation v British Columbia (Minister of Forests)* 2004 SCC 73 (CanLII); *R. v Sparrow*, 1990 CanLII 104 (SCC); *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)* 2004 SCC 74 (CanLII); *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)* 2005 SCC 69 (CanLII). See also the more recent SCC decisions of *Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council*, 2010 SCC 43 (CanLII) and *Beckman v Little Salmon/Carmacks First Nation* 2010 SCC 53 (CanLII), where the Supreme Court further explained that the duty to consult is a constitutional duty that involves the honour of the Crown and must be met.

²⁷ *Kitkatla Band v British Columbia*, 2002 SCC 31 (CanLII) at 66, citing *Cardinal v Attorney General of Alberta*, 1973 CanLII 980 (SCC).

²⁸ *Canadian Western Bank v Alberta*, 2007 SCC 22 (CanLII) at 24, 37; *Tsilhqot’in Nation v British Columbia*, 2014 SCC 44 (CanLII) at 147–148.

²⁹ Statistics Canada. (2017). Aboriginal peoples in Canada: Key results from the 2016 Census

³⁰ *Slaight Communications*, *supra* note at 23. See also *Québec (Procureure générale) c 9147-0732 Québec inc.*, 2020 SCC 32, at 31–34.

³¹ *Victoria (City) v Adams*, 2009 BCCA 563 (CanLII) at 35 [Victoria].

³² *Burns*, *supra* note; *Canada (Prime Minister) v Khadr*, 2010 SCC 22C22 (CanLII) [Khadr]; *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 (CanLII). See also, *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (CanLII) at 454 [First Nations CFC].

³³ For a discussion of the feminization of poverty, see *Moge v Moge*, 1992 CanLII 25 (SCC). For a discussion of economic and other barriers faced by racialized women, see *R v Hamilton*, 2003 CanLII 2862 (ON SC) (affirmed 2004 CanLII 5549 (ON CA)). For acknowledgement of “the significant level of poverty amongst children in single parent families” and the fact that “gender roles, divorce, separation, and lone parenthood contribute to child poverty and place a disproportionate burden on women” see *Willick v Willick*, 1994 CanLII 28 (SCC), *Thibaudeau v R.*, 1995 CanLII 99 (SCC) at 723 and *Michel v Graydon*, 2020 SCC 24 (CanLII) at 89–90. For acknowledgement of the particular “economic hardships and insecurity” faced by “disabled children of unmarried relationships, and their residential parents, most often mothers” see *Coates v Watson*, 2017 ONCJ 454 (CanLII).

³⁴ See *Willick v Willick*, 1994 CanLII 28 (SCC), *Thibaudeau v R.*, 1995 CanLII 99 (SCC) at 723 and *Michel v Graydon*, 2020 SCC 24 (CanLII) at 89-90, *supra* note.

³⁵ *R v Hamilton*, *supra* note.

³⁶ For a discussion of how the “low income cut-off” figures show the “sad litany of poverty being disproportionately experienced by tenants and by persons sharing traditionally stereotyped characteristics or comprising disadvantaged groups” including “sex, disability, ethnicity, aboriginal and single mother classifications,” see *Clark v Peterborough Utilities Commission*, 1995 CanLII 7090 (ON SC). For discussion of how “Aboriginal peoples experience high rates of unemployment and poverty, and face serious disadvantages in the areas of education, health and housing,” see *Lovelace v Ontario*, 2000 SCC 27 (CanLII) at 69, and *R v Kapp*, 2008 SCC 41 (CanLII) at 59. For discussion of how the “unbalanced

ratio of imprisonment for aboriginal offenders flows from a number of sources, including poverty, substance abuse, lack of education, and the lack of employment opportunities for aboriginal people,” see *R v Gladue*, 1999 CanLII 679 (SCC) and *McKay v Toronto Police Services Board*, 2011 HRT0 400 (CanLII). For acknowledgement that “courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples,” see *Anderson v Alberta*, 2022 SCC 6 at 36, citing *R. v. Ipeelee*, 2012 SCC 13 at 60.

³⁷ In *Eldridge v British Columbia (Attorney General)* 1997 CanLII 327 (SCC), the Supreme Court of Canada found that it is “an unfortunate truth that the history of disabled persons in Canada is largely one of exclusion and marginalization....One consequence of these attitudes is the persistent social and economic disadvantage faced by the disabled. Statistics indicate that persons with disabilities, in comparison to non-disabled persons, have less education, are more likely to be outside the labour force, face much higher unemployment rates, and are concentrated at the lower end of the pay scale when employed” (56).

In *R v Madeley*, 2016 ONCJ 108 (CanLII), the Court accepted that “the relationship between mental disability and poverty is notorious and indisputable, entirely fit for judicial notice” (98). That decision was overturned by *R. v Madeley* 2018 ONSC 291 (CanLII); the Ontario Superior Court of Justice found that the lower court’s reliance on judicial notice was not sufficient to make a finding that the victim surcharge provision in the *Criminal Code* creates a distinction based on an enumerated or analogous ground.

³⁸ In *R. v Morris*, 2021 ONCA 680 (CanLII), the court accepted that “systemic discrimination in many social institutions marginalized Black people in communities marked by poverty, diminished economic and employment opportunities, and a strong and aggressive police presence” (39).

For acknowledgement that “Systemic racial discrimination results in diminished educational and employment opportunities, higher rates of poverty, and therefore lower rates of property ownership among Indigenous, Black and racialized persons” see *R v Smith*, 2021 ONSC 8405 (CanLII) at 83.

See *R v Parks* 1993 CanLII 3383 (ON CA): “Racism, and in particular anti-black racism, is a part of our community’s psyche...[and] our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes. These elements combine to infect our society as a whole with the evil of racism. Blacks are among the primary victims of that evil.” And see *R v Spence*, 2005 SCC 71 (CanLII): “The administration of justice has faced up to the fact that racial prejudice and discrimination are intractable features of our society...” (1).

³⁹ *Kearney v Bramalea Ltd. (No. 2)*, 1998 CanLII 29852 (ON HRT) [Kearney]; *Shelter Corp. v Ontario (Human Rights Comm.)*, 2001 CanLII 28414 (ON SCDC); leave to appeal to the Court of Appeal dismissed.

⁴⁰ *Ibid.*

⁴¹ People facing precarious housing or experiencing homelessness, and advocacy groups have long argued for effective national and provincial strategies to address inadequate housing, developed and implemented in consultation with affected groups and subject to meaningful monitoring and evaluation. On 15 November 2011 Jennifer Tanudjaja, Janice Arsenault, Ansar Mahmood, Brian Dubourdiue and the Centre for Equality Rights in Accommodation filed an Amended Notice of Application at the Ontario Superior Court of Justice, alleging that “decisions, programs, actions and failures to act by the [governments of Canada and Ontario] created conditions that led to, support and sustain conditions of homelessness and inadequate housing,” thereby adversely affecting *Code* protected groups that are over-represented in the precariously housed population, or that are particularly vulnerable to the effects of housing precarity, including women in situations of domestic violence, parents and in particular single mothers, people with disabilities, First Nations, Metis and Inuit people, newcomers, racialized communities, seniors and youth. The Superior Court dismissed the application, concluding that the application was an “attempt to take ‘disparate and heterogeneous groups’ and treat them as an analogous ground under s.15(1) of the *Charter*. The applicants appealed, and the OHRC intervened to argue:

- Even if homelessness is not an analogous ground, actions that adversely affect people experiencing homelessness can be discriminatory if the actions have either a disproportionate

effect on an enumerated group or groups (such as affecting a high number of people in that group or groups) or if they have a disproportionate *impact* on an enumerated group or groups (such as causing particular or acute damage to that group or groups) (*Sauvé v Canada (Chief Electoral Officer)*, 2002 SCC 68 (CanLII) at 60; *Radek v Henderson Development (Canada) Ltd.*, 2005 BCHRT 302 (CanLII) at 512); *Downtown Vancouver Business Improvement Assn. v Pivot Legal Society*, 2012 BCHRT 23 (CanLII) at 595, 645–661.

- Government actions that adversely affect people who identify with a range of enumerated grounds can be discriminatory (*Kearney, supra* note).
- Courts should take an intersectional approach to whether discrimination based on a combination of enumerated grounds has occurred (*Sparks v Dartmouth/Halifax Regional Housing Authority*, 1993 CanLII 3176 (NS CA); *Frank v A.J.R. Enterprises Ltd.*, 1993 CanLII 16482 (BC HRT) at 35); *Corbiere v Canada (Minister of Indian and Northern Affairs)*, 1999 CanLII 687 (SCC) at 61; *James v Silver Campsites Ltd (No. 2)*, 2011 BCHRT 370 (CanLII) at 171, 184.
- Even if homelessness is not an analogous ground, it is a relevant contextual factor in determining whether discrimination has occurred with respect to enumerated grounds. (*Symes v Canada*, 1993 CanLII 55 (SCC) (dissent) at 186, 241; *Quebec (Attorney General) v A.*, 2013 SCC 5 (CanLII) at 324, 325, 331).

The Ontario Court of Appeal ultimately upheld the Superior Court decision. However, in her dissent, Justice Feldman found that the motion judge erred in law by striking the application at the pleadings stage. She found that the applicants' approach to *Charter* claims was novel, but given the jurisprudential journey of the *Charter's* development to date, it was neither plain nor obvious that the applicants' claims were doomed to fail (*Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 (CanLII) at 43).

⁴² See also discussion in Tracy Heffernan, Fay Faraday & Peter Rosenthal, "Fighting for the Right to Housing in Canada" (2015) 24 J Law & Soc Pol'y 1 at 58.

⁴³ *First Nations CFC, supra* note: The Canadian Human Rights Tribunal found that the government's provision of lesser child and family services funding to First Nations children and families living on reserves – resulting in service gaps, delays and denials – was discriminatory under the Canadian *Human Rights Act*. See also *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651 (CanLII) (where the Federal Court of Canada found that the government's provision of lesser health care coverage to refugee claimants from certain countries was a breach of section 15 of the *Charter* that could not be saved by section 1. The Court explained at 742: "Although there may be no obligation on the Governor in Council to provide health insurance coverage to those seeking the protection of Canada, once it chooses to provide such a benefit, it is obliged to do so in a non-discriminatory manner"), *Quebec (Attorney General) v Alliance of professional and technical personnel in health and social services*, 2018 SCC 17 (CanLII), *Fraser v Canada (Attorney General)*, 2020 SCC 28 (CanLII), and *Stadler v Director St. Boniface/St. Vital*, 2020 MBCA 46 (CanLII).

⁴⁴ For example see *Moore v British Columbia*, 2012 SCC 61 (CanLII) [Moore].

⁴⁵ *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44; *Moore, supra* note; *Inglis v British Columbia (Minister of Public Safety)*, 2013 BCSC 2309 (CanLII) [Inglis]. See also *Single Mothers' Alliance of BC Society v British Columbia*, 2019 BCSC 1427 (CanLII) and *AC and JF v Alberta*, 2021 ABCA 24 (CanLII), where the BC Superior Court and the Alberta Court of Appeal found that the government's discontinuance of financial assistance *might* represent *Charter* breaches under sections 7 and/or 15. See, however, *ETFO et al. v Her Majesty the Queen*, 2019 ONSC 1308 (CanLII) and *Bowman v Ontario* 2020 ONSC 7374 (CanLII), where the court found that revisions to Ontario's sex education curriculum and the cancellation of its basic income pilot program did *not* breach section 7 or section 15 of the *Charter*. In a similar vein, see *Leroux v Ontario*, 2021 ONSC 2269 (CanLII), where the Ontario Superior Court found at 111 that "(i) the government has no positive obligation to ensure that anyone enjoys life, liberty or security of the person; (ii) social assistance is an economic question which generally falls outside the purview of s.7. This is particularly the case where the question is one of eligibility rather than entitlement; (iii) if the government has no obligation under s.7 to provide a social service benefit, being denied or made to wait for this benefit cannot be a breach of s.7..." C 44xx (CanLII)

⁴⁶ *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 (CanLII); *Victoria, supra* note; *Abbotsford (City) v Shantz*, 2015 BCSC 1909 (CanLII); *British Columbia v Adamson*, 2016 BCSC 584 (CanLII).